

1-19-2012

State v. Aguilar Clerk's Record v. 1 Dckt. 38068

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LAW CLERK

Supreme Court No. 38068

Vol. 1 of 10

VOLUME I

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

FILED - COPY

JAN 19 2012

Supreme Court Court of Appeals
Entered on A/S by:

STATE OF IDAHO,

**Plaintiff-
Respondent,**

-VS-

JAVIER AGUILAR,

**Defendant-
Appellant.**

Appealed from the District of the Third Judicial District
for the State of Idaho, in and for Canyon County

Honorable BRADLY S. FORD, District Judge

Molly Huskey
State Appellate Public Defender
3050 N. Lake Harbor Lane, Ste. 100
Boise, Idaho 83703

Attorney for Appellant

Lawrence G. Wasden
Attorney General
Statehouse
Boise, Idaho 83720

Attorney for Respondent

38068

IN THE SUPREME COURT OF THE
STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-)	
Respondent,)	
	)	Supreme Court No. 38068
-vs-)	
)	
JAVIER AGUILAR,)	
)	
Defendant-)	
Appellant.)	

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE BRADLY S. FORD, Presiding

Molly Huskey, State Appellate Public Defender, 3050 N. Lake Harbor Lane, Ste. 100,
Boise, Idaho 83703

Attorney for Appellant

Lawrence G. Wasden, Attorney General, Statehouse, Boise, Idaho 83720

Attorney for Respondent

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State of Idaho vs. Javier Aguilar

Felony

Date		Judge
7/15/2009	New Case Filed-Felony	Bradly S Ford
	Indictment	Court Clerks District (998)
	Warrant Issued - Arrest Bond amount: 500000.00 Defendant: Aguilar, Javier w/ NCO	Gregory M Culet
	Case Status Changed: Inactive	Bradly S Ford
7/16/2009	Hearing Scheduled (Arraignment (In Custody) 07/16/2009 01:30 PM)	Michael J. Griffin
	Warrant Returned Defendant: Aguilar, Javier - Served	Bradly S Ford
	Case Status Changed: Activate (previously inactive)	Bradly S Ford
	Request to Obtain Approval to Video Record, Broadcast or Photograph a Court Proceeding - KTVB -- GRANTED	Michael J. Griffin
	Hearing result for Arraignment (In Custody) held on 07/16/2009 01:30 PM: Arraignment / First Appearance	Michael J. Griffin
	Hearing result for Arraignment (In Custody) held on 07/16/2009 01:30 PM: Constitutional Rights Warning	Michael J. Griffin
	Hearing result for Arraignment (In Custody) held on 07/16/2009 01:30 PM: Motion Held BOND REDUCTION	Michael J. Griffin
	Hearing result for Arraignment (In Custody) held on 07/16/2009 01:30 PM: Motion Denied BOND REDUCTION	Michael J. Griffin
	Hearing result for Arraignment (In Custody) held on 07/16/2009 01:30 PM: No Contact Order	Michael J. Griffin
	Hearing Scheduled (Arrn. - District Court 07/31/2009 09:00 AM)	Gregory M Culet
	No Contact Order: Order Granted	Michael J. Griffin
7/24/2009	Notice Of Appearance and Entry of Not Guilty Plea and Request for Pre Trial/Jury Trial Dates	Bradly S Ford
	Motion for Bond Reduction or Release on Own Recognizance and NOHR	Bradly S Ford
	Request For Discovery	Bradly S Ford
	Hearing Scheduled (Arrn. - District Court 07/31/2009 08:59 AM) & Bnd Red or Release OR	Gregory M Culet
7/27/2009	Request For Discovery	Bradly S Ford
	Demand For Notice Of Defense Of Alibi	Bradly S Ford
	Pa's Response to Request for Discovery & Notice of Intent to Use I.R.E. 404(b) Evidence	Bradly S Ford
7/30/2009	Motion to Unseal Grand Jury Transcript	Bradly S Ford
	Motion for an Order to Produce the Record of Grand Jury Proceedings	Bradly S Ford
	PA's First Supplemental Response to Request for Discovery	Bradly S Ford
7/31/2009	Bond Posted - Surety (Amount 500000.00)	Bradly S Ford
	Notice of Bond Posted	Bradly S Ford

000001

State of Idaho vs. Javier Aguilar

Felony

Date		Judge
7/31/2009	Hearing result for Arrn. - District Court held on 07/31/2009 08:59 AM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages FORD -PT Oct 5 3pm JT Oct 26-30 9am Morfitt Motion to unseal GJ Transcript & Motion to Produce the GJ & Bnd Red or Release OR	Gregory M Culet
	Hearing result for Arrn. - District Court held on 07/31/2009 08:59 AM: Arraignment / First Appearance FORD -PT Oct 5 3pm JT Oct 26-30 9am Morfitt Motion to unseal GJ Transcript & Motion to Produce the GJ & Bnd Red or Release OR	Gregory M Culet
	Hearing result for Arrn. - District Court held on 07/31/2009 08:59 AM: Appear & Plead Not Guilty FORD -PT Oct 5 3pm JT Oct 26-30 9am Morfitt Motion to unseal GJ Transcript & Motion to Produce the GJ & Bnd Red or Release OR	Gregory M Culet
	Hearing Scheduled (Pre Trial 10/05/2009 03:00 PM)	Brady S Ford
	Hearing Scheduled (Jury Trial 10/26/2009 9:00 AM) STNW	James C. Morfitt
	Motion Granted - Motion to unseal Grand Jury Transcript and Motion to Produce the Grand Jury	Gregory M Culet
	Motion Denied Motion for Bond Reduction or OR	Gregory M Culet
8/3/2009	Notice Of Hearing	Gregory M Culet
8/7/2009	Order Unsealing Grand Jury Transcript	Brady S Ford
	Order to Produce Grand Jury Transcript	Brady S Ford
8/10/2009	Estimated Cost of Transcript (\$100.75)	Brady S Ford
8/12/2009	PA- Second Supplemental Response to Request for Discovery	Brady S Ford
8/24/2009	Bond Posted - Cash (Receipt 411908 Dated 8/24/2009 for 100.75)	Brady S Ford
8/27/2009	PA- Third Supplemental Response to Request for Discovery	Brady S Ford
9/1/2009	Stipulation for substitution of counsel/Charney	Brady S Ford
9/21/2009	Request For Discovery	Brady S Ford
	Demand For Notice Of Defense Of Alibi	Brady S Ford
	Pa's Fourth Supplemental Response to Request for Discovery	Brady S Ford
9/22/2009	PA- Notice of Intent to Use I.R.E. 404(b) Evidence	Brady S Ford
10/5/2009	Transcript Filed (Grand Jury)	Brady S Ford
	Document sealed	
	Bond Converted (Transaction number 662431 dated 10/5/2009 amount 100.75)	Brady S Ford
	Hearing result for Pre Trial held on 10/05/2009 03:00 PM: Continued	Brady S Ford
	Hearing result for Jury Trial held on 10/26/2009 09:00 AM: Continued	James C. Morfitt

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State of Idaho vs. Javier Aguilar

Felony

Date		Judge
10/5/2009	District Court Hearing Held Court Reporter: Yvonne Hyde Gier Number of Transcript Pages for this hearing estimated: less than 100 pages	Bradly S Ford
	Hearing Scheduled (Pre Trial 02/08/2010 03:00 PM)	Bradly S Ford
	Hearing Scheduled (Jury Trial 02/23/2010 09:00 AM) STW	Bradly S Ford
12/9/2009	PAs Fifth Supplemental Response to Request for Discovery	Bradly S Ford
12/10/2009	Amended Notice of Intent Rule 404 (b) I.R.E. Evidence	Bradly S Ford
1/19/2010	Pa's Sixth Supplemental Response to Request for Discovery	Bradly S Ford
1/27/2010	Motion Pursuant to Idaho Code 9-1805	Bradly S Ford
	State's Proposed Jury Instructions	Bradly S Ford
	Witness List, Exhibit List and Notice of Intent	Bradly S Ford
	Motion in Limine	Bradly S Ford
	Notice Of Hearing	Bradly S Ford
2/1/2010	Objection ____ to motion in limine	Bradly S Ford
	Objection ____pursuant to Idaho Code 9-1805	Bradly S Ford
2/2/2010	Notice of service	Bradly S Ford
	Affidavit of Erica M Kallin	Bradly S Ford
	Warrant Issued - Bench Bond amount: \$50,000.00 Material Witness (Zach Brewer)	Bradly S Ford
2/4/2010	PA's Seventh Supplemental Response to Request for Discovery	Bradly S Ford
	Objection to Defendant's Request for the State to Provide Counseling Records	Bradly S Ford
2/5/2010	Notice of Service	Bradly S Ford
	Specific Request For Discovery	Bradly S Ford
2/8/2010	Hearing result for Pre Trial held on 02/08/2010 03:00 PM: Interim Hearing Held Motion in Limine	Bradly S Ford
	Pre-trial Memorandum	Bradly S Ford
	Hearing result for Pre Trial held on 02/08/2010 03:00 PM: Motion Held Motion in Limine (UNDER ADVISEMENT)	Bradly S Ford
	District Court Hearing Held Court Reporter: Yvonne Hyde Gier Number of Transcript Pages for this hearing estimated: less than 100 pages	Bradly S Ford
	Hearing Scheduled (Conference - Status 02/22/2010 01:00 PM)	Bradly S Ford
2/16/2010	Pa's Response To Specific Request For Discovery	Bradly S Ford
	Motion In Limine	Bradly S Ford
2/22/2010	Hearing result for Conference - Status held on 02/22/2010 01:00 PM: Interim Hearing Held	Bradly S Ford

State of Idaho vs. Javier Aguilar

Felony

Date		Judge
2/22/2010	District Court Hearing Held Court Reporter: Yvonne Hyde Gier Number of Transcript Pages for this hearing estimated: less than 100 pages Motion Denied - State's 404b Motion	Bradly S Ford
	Motion Granted - State's Motion in Limine	Bradly S Ford
2/23/2010	Hearing result for Jury Trial held on 02/23/2010 09:00 AM: Jury Trial Started	Bradly S Ford
	Opening Jury Instructions	Bradly S Ford
2/24/2010	Interim Hearing Held - Day 2	Bradly S Ford
2/25/2010	Interim Hearing Held - Day 3 Closing Jury Instructions	Bradly S Ford
	Question of the Jury / Answer of the Court	Bradly S Ford
	Stipulation of the Parties	Bradly S Ford
2/26/2010	Interim Hearing Held - Day 4 (Continued Deliberation)	Bradly S Ford
	Verdict of the Jury	Bradly S Ford
	Found Guilty After Trial	Bradly S Ford
	Commitment On Bond - Bond Revoked (HOLD WITHOUT BOND)	Bradly S Ford
	Hearing result for Jury Trial held 23-26 February 2010 09:00 AM: District Court Hearing Held Court Reporter: Yvonne Hyde Gier Number of Transcript Pages for this hearing estimated: more than 500 pages	Bradly S Ford
	Hearing Scheduled (Sentencing 05/11/2010 09:30 AM) BLOCK MORNING	Bradly S Ford
	Pre-Sentence Investigation Evaluation Ordered	Bradly S Ford
	Estimated Cost on Appeal - \$1950.00 (Yvonne Hyde Gier)	Bradly S Ford
	Surety Bond Exonerated (Amount 500,000.00)	Bradly S Ford
3/5/2010	Motion for extension of time	Bradly S Ford
	Order for psycho-sexual abuse evaluation	Bradly S Ford
	Stipulation To Grant Defendant's Motion For Extension of Time	Bradly S Ford
	Interim Hearing Held - Estrada Warning	Bradly S Ford
	District Court Hearing Held Court Reporter: Yvonne Hyde Gier Number of Transcript Pages for this hearing estimated: less than 100 pages	Bradly S Ford
	Advisory and Acknowledgement of Continued Fifth Amendment Rights	Bradly S Ford
3/8/2010	Order extension to file motion for new trial by 03-26-2010 with supporting memorandum	Bradly S Ford
3/12/2010	Objection To Order For Psycho-Sexual Abuse Evaluation	Bradly S Ford
3/18/2010	Hearing Scheduled (Motion Hearing 03/23/2010 08:45 AM) Objection to Order for Psycho-Sexual eval	Bradly S Ford

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State of Idaho vs. Javier Aguilar

Felony

Date		Judge
3/18/2010	Notice Of Hearing/Objt Eval	Bradly S Ford
3/19/2010	Hearing Scheduled (Motion Hearing 03/30/2010 11:00 AM) Objection to Order for Psycho-Sexual eval	Bradly S Ford
3/23/2010	Amended Notice Of Hearing	Bradly S Ford
3/30/2010	Interim Hearing Held - Objection to Order for Psycho-Sexual eval	Bradly S Ford
	District Court Hearing Held	Bradly S Ford
	Court Reporter: Yvonne Hyde Gier	
	Number of Transcript Pages for this hearing estimated: less than 100 pages	
4/8/2010	Letter from Defendant RE: Attorney/ copies sent to each of counsel	Bradly S Ford
4/9/2010	Hearing Scheduled (Conference - Status 04/23/2010 03:30 PM)-Charney office called he will be out of town	Bradly S Ford
4/15/2010	Hearing Scheduled (Conference - Status 05/03/2010 04:00 PM)	Bradly S Ford
4/16/2010	Amended Notice Of Hearing	Bradly S Ford
5/3/2010	Hearing result for Conference - Status held on 05/03/2010 04:00 PM:	Bradly S Ford
	District Court Hearing Held	
	Court Reporter: Yvonne Hyde Gier	
	Number of Transcript Pages for this hearing estimated: less than 100 pages	
	Hearing result for Conference - Status held on 05/03/2010 04:00 PM:	Bradly S Ford
	Interim Hearing Held - Mr. Charney discharged as counsel at def's request	
	Hearing result for Conference - Status held on 05/03/2010 04:00 PM:	Bradly S Ford
	Order Appointing Public Defender	
5/5/2010	Letter from defendant/ cc: pa and pd	Bradly S Ford
5/7/2010	Request to Obtain Approval to Broadcast and / or Photograph a Court Proceeding / W Judge for approval - Idaho Statesman	Bradly S Ford
5/11/2010	Hearing result for Sentencing held on 05/11/2010 09:30 AM: Continued BLOCK MORNING	Bradly S Ford
	Hearing Scheduled (Sentencing 06/08/2010 01:00 PM)	Bradly S Ford
	Notice of Public Defender Conflict	Bradly S Ford
	Order Appointing Conflict Counsel - K. Stringfield	Bradly S Ford
	District Court Hearing Held	Bradly S Ford
	Court Reporter: Yvonne Hyde Gier	
	Number of Transcript Pages for this hearing estimated: less than 100 pages	
5/14/2010	Objection to Letters Contained in PSI	Bradly S Ford
	PA's Eighth Supplemental Response to Request for Discovery	Bradly S Ford
	Notice of Intent to Argue Uncharged Victims	Bradly S Ford
5/24/2010	PA 9th Supplemental Response to Request for Discovery	Bradly S Ford
5/25/2010	sentencing memorandum	Bradly S Ford
3/4/2010	Motion To Continue	Bradly S Ford
	Motion To Shorten Time and Notice of Hearing	Bradly S Ford
	Hearing Scheduled (Motion Hearing 06/07/2010 09:00 AM)	Bradly S Ford

000005

State of Idaho vs. Javier Aguilar

Felony

Date		Judge
6/7/2010	Hearing result for Motion Hearing held on 06/07/2010 09:00 AM: Motion Held	Bradly S Ford
	Hearing result for Motion Hearing held on 06/07/2010 09:00 AM: Motion Granted / Defendant's Motion to Continue Sentencing	Bradly S Ford
	District Court Hearing Held Court Reporter: Yvonne Hyde Gier Number of Transcript Pages for this hearing estimated: less than 100 pages	Bradly S Ford
	Hearing result for Sentencing held on 06/08/2010 01:00 PM: Hearing Vacated	Bradly S Ford
	Hearing Scheduled (Further Proceeding 06/14/2010 10:00 AM) set sentencing	Bradly S Ford
	District Court Hearing Held Court Reporter: Yvonne Hyde Gier Number of Transcript Pages for this hearing estimated: less than 100 pages	Bradly S Ford
6/14/2010	Hearing result for Further Proceeding held on 06/14/2010 10:00 AM: Interim Hearing Held set sentencing	Bradly S Ford
	District Court Hearing Held Court Reporter: Yvonne Hyde Gier Number of Transcript Pages for this hearing estimated: less than 100 pages	Bradly S Ford
	Hearing Scheduled (Sentencing 08/16/2010 02:00 PM) Block afternoon (2:00 p.m. - 5:00 p.m.)	Bradly S Ford
6/15/2010	Second Order for Psychosexual Abuse Evaluation - Sane Solutions	Bradly S Ford
6/16/2010	Supplemental to Objection to Letters Contained in PSI	Bradly S Ford
8/6/2010	Second Supplementa to Objection to Letters Contained in PSI	Bradly S Ford
8/12/2010	Request To Obtain Approval To Broadcast and/ or Photograph a Court Proceedings and Order	Bradly S Ford
8/13/2010	Sentencing Brief	Bradly S Ford
8/16/2010	Objection to Request to Obtain Approval to Broadcast, etc.	Bradly S Ford
	Hearing result for Sentencing held on 08/16/2010 02:00 PM: Hearing Held Block afternoon (2:00 p.m. - 5:00 p.m.)	Bradly S Ford
	Hearing result for Sentencing held on 08/16/2010 02:00 PM: Final Judgement, Order Or Decree Entered	Bradly S Ford
	Sentenced To Incarceration	Bradly S Ford
	Commitment - Held To Answer (3 counts)	Bradly S Ford
	Order for DNA Sample and Right Thumbprint Impression	Bradly S Ford
	Civil penalty ordered - \$5,000 each victim - total \$15,000.00	Bradly S Ford
	District Court Hearing Held Court Reporter: Yvonne Hyde Gier Number of Transcript Pages for this hearing estimated: less than 100 pages	Bradly S Ford
	Case Status Changed: closed pending clerk action	Bradly S Ford
	Warrant Recall / Material Witness	Bradly S Ford

000006

State of Idaho vs. Javier Aguilar

Felony

Date		Judge
3/16/2010	Warrant Quashed Material Witness Defendant: Aguilar, Javier	Brady S Ford
3/20/2010	Warrant Returned, No Service Material Witness Defendant: Aguilar, Javier	Brady S Ford
	Judgment for Victims (Civil JDMT) JA	Brady S Ford
	Judgment for Victims (Civil JDMT) JB	Brady S Ford
	Judgment for Victims (Civil JDMT) CB	Brady S Ford
3/25/2010	Restitution Ordered 5000.00 victim # 1 CIVIL JUDGMENT	Brady S Ford
	Restitution Ordered 5000.00 victim # 2 CIVIL JUDGMENT	Brady S Ford
	Restitution Ordered 5000.00 victim # 3 CIVIL JUDGMENT	Brady S Ford
3/27/2010	Judgment and Commitment	Brady S Ford
3/16/2010	Notice of Appeal Pro Se	Brady S Ford
	Appealed To The Supreme Court	Brady S Ford
	Motion and Affidavit in support for appointment of Counsel	Brady S Ford
	Motion and affidavit for permission to proceed on partial payment of court fees	Brady S Ford
3/22/2010	Order Appointing State Appellate Public Defender In Direct Appeal	Brady S Ford
10/27/2010	amended notice of appeal	Brady S Ford
11/15/2010	Motion To Reduce Sentence Pursuant To Rule 35	Brady S Ford
11/18/2010	Notice Of Hearing on rule 35 motion	Brady S Ford
	Hearing Scheduled (Motion Hearing 12/13/2010 02:30 PM) Rule 35	Brady S Ford
11/19/2010	Objection to Rule 35 Motion and Request for Hearing	Brady S Ford
	Order of transport	Brady S Ford
12/7/2010	Motion and affidavit in support for appointment of counsel	Brady S Ford
	Motion for hearing	Brady S Ford
	Motion for correction or reduction of sentence, ICR 35	Brady S Ford
	Motion and affidavit for permission to proceed on partial payment of court fees (prisoner)	Brady S Ford
12/13/2010	Hearing Scheduled (Motion Hearing 02/15/2011 09:30 AM) Rule 35	Brady S Ford
	Hearing result for Motion Hearing held on 12/13/2010 02:30 PM: Continued Rule 35	Brady S Ford
	District Court Hearing Held Court Reporter: Yvonne Hyde Gier Number of Transcript Pages for this hearing estimated: less than 100 pages	Brady S Ford
12/21/2010	Order to Transport	Brady S Ford
2/3/2011	Brief in Support of Objection to Defendant's Rule 35 Motion	Brady S Ford
2/15/2011	Hearing result for Motion Hearing held on 02/15/2011 09:30 AM: Motion Held Rule 35 (UNDER ADVISEMENT)	Brady S Ford
	District Court Hearing Held Court Reporter: Yvonne Hyde Gier Number of Transcript Pages for this hearing estimated: less than 100 pages	Brady S Ford

000007

ROA Report

Case: CR-2009-0024815-C Current Judge: Bradly S Ford

Defendant: Aguilar, Javier

State of Idaho vs. Javier Aguilar

Felony

Date		Judge
3/31/2011	Order denying motion for Reduction of Sentence Pursuant to ICR 35 (Denied)	Bradly S Ford
	Case Status Changed: closed pending clerk action	Bradly S Ford
4/12/2011	Notice of Appeal (pro se)	Bradly S Ford
	Appealed To The Supreme Court	Bradly S Ford
	Motion And Affidavit for Permission to proceed on partial payment (prisoner)	Bradly S Ford
	Motion and Affidavit in Support of Appointment of Counsel	Bradly S Ford
4/20/2011	Order Appointing State Appellate Public Defender	Bradly S Ford

dm

JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
10:40 A.M.
JUL 15 2009
CANYON COUNTY CLERK
J MEYERS, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

JAVIER AGUILAR,

Defendant.

Case No.

CR09-24815-C

INDICTMENT

for the crime of:

COUNTS I, II AND III: LEWD CONDUCT

WITH A MINOR UNDER SIXTEEN

I.C. Section 18-1508

JAVIER AGUILAR is accused by the Grand Jury of Canyon County, of the crime
of LEWD CONDUCT WITH A MINOR UNDER SIXTEEN (THREE COUNTS), a felony,
Idaho Code Section 18-1508 committed as follows:

COUNT I

That the Defendant, JAVIER AGUILAR, on or about January, 2002 through July 15,
2009, in the County of Canyon, State of Idaho, did wilfully and lewdly, commit a lewd and/or

INDICTMENT

lascivious act upon and/or with the body of a minor, J.B. (DOB [REDACTED]), under the age of sixteen years, to-wit: of the age of ^{five Thirteen} ~~six to nine~~ ⁽⁵⁻¹³⁾ ~~(8-11)~~ years, by genital to buttocks and/or manual to genital and/or oral to genital contact with the intent to arouse, appeal to and/or gratify the lust, passion and/or sexual desire of the defendant and/or said minor child.

All of which is contrary to Idaho Code Section 18-1508 and against the power, peace and dignity of the State of Idaho.

COUNT II

That the Defendant, JAVIER AGUILAR, on or about January, 2002 ²⁰⁰⁹ through July 15, 2009, ^{BA} in the County of Canyon, State of Idaho, did wilfully and lewdly, commit a lewd and/or lascivious act upon and/or with the body of a minor, C.B. (DOB [REDACTED]), under the age of sixteen years, to-wit: of the age of ^{Six Thirteen} ~~eight to eleven~~ ⁽⁶⁻¹³⁾ ~~(8-11)~~ years, by genital to buttocks and/or manual to genital contact with the intent to arouse, appeal to and/or gratify the lust, passion and/or sexual desire of the defendant and/or said minor child.

All of which is contrary to Idaho Code Section 18-1508 and against the power, peace and dignity of the State of Idaho.

COUNT III

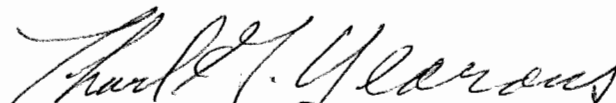
That the Defendant, JAVIER AGUILAR, on or about January, 2004 ² ~~BA through July 15, 2009, in the County of Canyon, State of Idaho, did wilfully and lewdly, commit a lewd and/or lascivious act upon and/or with the body of a minor, J.A. (DOB [REDACTED]), under the age of sixteen years, to-wit: of the age of ^{fifteen} ~~nine to ten~~ ⁽¹⁰⁻¹⁵⁾ ~~(9-10)~~ years, by genital to buttocks and/or manual to genital and/or oral to genital contact with the intent to arouse, appeal to and/or gratify the lust, passion and/or sexual desire of the defendant and/or said minor child.~~

INDICTMENT

All of which is contrary to Idaho Code Section 18-1508 and against the power,
peace and dignity of the State of Idaho.

A TRUE BILL

Presented in Open Court this 15 day of July, 2009.



Foreman of the Grand Jury of
Canyon County, State of Idaho

NAMES OF WITNESSES EXAMINED BEFORE THE GRAND JURY:

C.E.
J.B.
C.B.
JONATHON AQUIRRE
DET. BRICE KING

JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany
Caldwell, Idaho 83605
Telephone: (208) 454-7391

CANYON COUNTY CLERK
J MEYERS, DEPUTY

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

DOCKETED

named and to bring him before the District Court in the County of Canyon, or in case of my absence or inability to act before the nearest or most accessible District Judge in Canyon County.

May be served:

_____ Daytime only

AM Daytime or night time

Bond: \$ 500,000.00

NO CONTACT ORDER

[] If checked, Defendant is not to be released on bond until the following No Contact Order is served on, or signed by, the Defendant:

As a condition of Bond, YOU, THE DEFENDANT IN THE ABOVE CAPTIONED CASE, ARE HEREBY ORDERED TO HAVE NO CONTACT DIRECTLY OR INDIRECTLY WITH THE ALLEGED VICTIM(S):

J.B. (DOB 7-10-86) J.A. (DOB 10-17-94)
G.B. (DOB 6-26-84) with: ~~CE~~ CE, (DOB 4-23-98)
No contact with any minors (i.e. - under age 18)

You shall not harass, follow, contact, attempt to contact, communicate with in any form, or knowingly remain within 300 feet of the alleged victim(s) or his/her property, residence, work or school.

THIS ORDER WILL EXPIRE AT 11:59 P.M. ON THE 11 DAY OF July, 2010, OR UPON DISMISSAL OF THE CASE.

VIOLATION OF THIS ORDER MAY BE PROSECUTED AS A SEPARATE CRIME UNDER Idaho Code section 18-920 for which no bail will be set until you appear before a judge and is subject to a penalty of up to one (1) year in jail or up to a one thousand dollar (\$1,000) fine, or both.

THIS ORDER CAN BE MODIFIED ONLY BY A JUDGE AND WHEN MORE THAN ONE DOMESTIC VIOLENCE PROTECTION ORDER (Title 39, Chapter 62 of Idaho Code) IS IN PLACE THE MOST RESTRICTIVE PROVISION WILL CONTROL ANY CONFLICTING TERMS OF ANY OTHER CIVIL OR CRIMINAL PROTECTION ORDER.

The clerk shall immediately give written notification to the records department of the

Canyon County Sheriff's Office of the issuance of this order. THE INFORMATION ON THIS ORDER SHALL BE ENTERED INTO THE IDAHO LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM. This order is entered pursuant to Idaho Code section 18-920, and Idaho Criminal Rule 46.2 (for felonies) or Idaho Misdemeanor Criminal Rule 13 (for misdemeanors).

DATED this 15 day of July, 2009.


DISTRICT JUDGE

RACE: WAM	HAIR: BLK	EYES:
HEIGHT: 5'4"	WEIGHT: 125	DOB: [REDACTED]
SS#: [REDACTED]	CR#: 08051557	AGENCY: NPD
Officer:	Badge #:	

Last known Address: 2813 Muskrat Ct., Nampa, ID

NCIC ENTRY: (Additional Levels Inclusive)

- ☐ Local
- ☐ Statewide
- ☐ Surrounding States
- ☐ Western United States
- ☐ Nationwide

By: _____

Dated: _____

RETURN OF SERVICE

I CERTIFY that I served the foregoing Warrant by arresting the above named Defendant and bringing into this Court this _____ day of _____, 2009.

Deputy Sheriff/City Policeman/
State Policeman

WARRANT OF ARREST

Canyon County Sheriff's Office of the issuance of this order. THE INFORMATION ON THIS ORDER SHALL BE ENTERED INTO THE IDAHO LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM. This order is entered pursuant to Idaho Code section 18-920, and Idaho Criminal Rule 46.2 (for felonies) or Idaho Misdemeanor Criminal Rule 13 (for misdemeanors).

DATED this 15 day of July, 2009.


DISTRICT JUDGE

RACE: WAM	HAIR: BLK	EYES:
HEIGHT: 5'4"	WEIGHT: 125	DOB: 7-17-1968
SS#: 518-29-8517	CR#: 08051557	AGENCY: NPD
Officer:	Badge #:	

Last known Address: 2813 Muskrat Ct., Nampa, ID

NCIC ENTRY: (Additional Levels Inclusive)


☐ Local
☐ Statewide
☐ Surrounding States
☐ Western United States
☐ Nationwide

By: _____

Dated: _____

RETURN OF SERVICE

I CERTIFY that I served the foregoing Warrant by arresting the above named Defendant and bringing into this Court this 15th day of July, 2009.


Deputy Sheriff/City Policeman/
State Policeman

WARRANT OF ARREST

09/04/06 08:42:17

3

001

Fax # 454-6616
11:20 A.M. P.M.

JUL 16 2009

IN THE DISTRICT COURT OF THE 3rd JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CanyonCANYON COUNTY CLERK
MEYERS, DEPUTYState of Idaho
PLAINTIFF(S)

V.

Javier Aguilar
DEFENDANT(S)REQUEST TO OBTAIN
APPROVAL TO VIDEO
RECORD, BROADCAST OR
PHOTOGRAPH A COURT
PROCEEDING

I hereby request approval to:

☒ video record ☒ broadcast ☐ photograph the following court proceeding:

Case No.:

CR-09-24815

Date:

7/16/09

Time:

1:30pm

Location:

Presiding Judge:

Michael Griffin

I have read Rule 45 of the Idaho Court Administrative Rules permitting cameras in the courtroom, and will comply in all respects with the provisions of that rule, and will also make certain that all other persons from my organization participating in video or audio recording or broadcasting or photographing of the court proceedings have read Rule 45 of the Idaho Court Administrative Rules and will comply in all respects with the provisions of that rule.

Lisa Chavez
Print NameLisa Chavez
SignatureKTVB
News Organization Represented321-5741
Phone Number7/16/09
Date

09/04/06 08:42:17

4

ORDER

THE COURT, having considered the above Request for Approval under Rule 45 of the Idaho Court Administrative Rules, hereby orders that permission to video record the above hearing is:

☒ GRANTED under the following restrictions in addition to those set forth in Rule 45 of the Idaho Court Administrative Rules:

☐ DENIED.

THE COURT, having considered the above Request for Approval under Rule 45 of the Idaho Court Administrative Rules, hereby orders that permission to broadcast the above hearing is:

☐ GRANTED under the following restrictions in addition to those set forth in Rule 45 of the Idaho Court Administrative Rules:

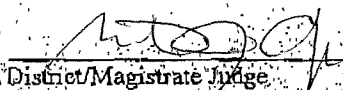
☐ DENIED.

THE COURT, having considered the above Request for Approval under Rule 45 of the Idaho Court Administrative Rules, hereby orders that permission to photograph the above hearing is:

☐ GRANTED under the following restrictions in addition to those set forth in Rule 45 of the Idaho Court Administrative Rules:

☐ DENIED.

DATED this 16 day of July, 2009.



District/Magistrate Judge

☒ ARRAIGNMENT ☐ CONT'D ARRAIGNMENT ☐ FIRST APPEARANCE

Case No. CR-2009-24815-C
Date 7/16/09
Judge Griffin
Recording Mag7(127-134)

☒ Defendant ☒ Prosecutor Erin Christensen
☒ Defendant's Attorney Robert Tilley ☐ Interpreter _____

☒ was informed of the charges against him/her and all legal rights, including the right to be represented by counsel.

☐ requested court appointed counsel. ☐ waived right to counsel.

☐ Indigency hearing held.

☐ Court appointed public defender. ☐ Court denied court-appointed counsel.

☐ Arraignment continued to _____ before Judge _____.

☐ to consult / retain counsel. ☐

M. Roden, Deputy Clerk

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 7/16/09 AT 130P.M.
CLERK OF THE DISTRICT COURT
BY [Signature], Deputy

THE STATE OF IDAHO,

Plaintiff,

-vs-

Javier Aguilar

Defendant.

Citation / Case No. CR-2009-24815-C

Arresting Agency _____

NO CONTACT ORDER - Detention

Defendant has been charged with violating Idaho Code section(s):

- ☐ 18-918 Domestic Assault or Domestic Battery ☐ 39-6312 Violation of a Protection Order
☐ 18-7905 Stalking (Felony) ☐ 18-7906 Stalking (Misdemeanor) ☐ 18-901 Assault
☐ 18-903 Battery ☐ 18-905 Aggravated Assault ☐ 18-907 Aggravated Battery
☒ Other JB dob 7/10/96, CB dob 6/26/94, JA dob 10/17/93, CE dob 4/23/94

Alleged Victim's Name

YOU, THE DEFENDANT, ARE HEREBY ORDERED TO HAVE NO CONTACT DIRECTLY OR INDIRECTLY WITH THE ALLEGED VICTIM. You shall not harass, follow, contact, attempt to contact, communicate with in any form, or knowingly remain within 300 feet of the alleged victim or his/her property, residence, work, or school.

You are further ordered to vacate the premises where the alleged victim resides. You must contact a law enforcement officer who will make arrangements to accompany you to the residence to remove items and tools necessary for employment and personal belongings. The officer will determine what constitutes necessary personal belongings.

VIOLATION OF THIS ORDER IS A SEPARATE CRIME under Idaho Code section 18-920 for which no bail will be set until you appear before a judge and is subject to a penalty of up to one (1) year in jail and up to a one thousand dollar (\$1,000) fine. Any person who pleads guilty to or is found guilty of a violation of this section who previously has pled guilty to or been found guilty of two (2) violations of this section, or of any substantially conforming foreign criminal violation or any combination thereof, notwithstanding the form of the judgment or withheld judgment, within five (5) years of the first conviction, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars (\$5,000), or by both fine and imprisonment.

THIS ORDER CAN BE MODIFIED ONLY BY A JUDGE AND WILL REMAIN IN EFFECT UNTIL 11:59 P.M. ON 7/16/2010 OR DISMISSAL OF THIS CASE.

When more than one (1) DOMESTIC VIOLENCE PROTECTION ORDER IS IN PLACE PURSUANT TO IDAHO'S DOMESTIC VIOLENCE CRIME PREVENTION ACT (Title 39, Chapter 63 of the Idaho Code), the most restrictive provision will control any conflicting terms of any other civil or criminal protection order; however, entry or dismissal of a civil protection order shall not result in dismissal of this Order.

The Clerk of the Court shall give written notification to the Sheriff's Department in the county in which this Order is issued immediately and THE INFORMATION ON THIS ORDER SHALL BE ENTERED INTO THE IDAHO LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM.

Dated: 7/16/09

Signed: [Signature]

Judge 7/16/09

Copy handed to Defendant by [Signature]

Deputy Clerk on [Signature]

COPY SERVED ON DEFENDANT BY _____ DEPUTY SHERIFF(_____) on date _____ at _____ am/pm
Badge # _____

☒ White

Court

☒ Yellow

Dispatch

☒ Pink

Defendant

☒ Green

Jail

☒ Orange

PA (Nampa, Caldwell, County)

TRANSMISSION VERIFICATION REPORT

TIME : 07/16/2009 14:52

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

07/16 14:49
NO CONTACTS
00:02:09
04
OK
STANDARD
ECM

000020

ROBERT P. TILLEY
Tilley Law Office, PLLC
8 Sixth St. N., Suite 103
Nampa, ID 83687
(208) 461-8100
(208) 461-8900 fax

JUL 24 2009
CANYON COUNTY CLERK
V TRUJILLO, DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NO. CR 09-24815 C
)	
vs.	)	MOTION FOR BOND
	)	REDUCTION OR RELEASE ON
JAVIER AGUILAR,	)	OWN RECOGNIZANCE AND
	)	NOTICE OF HEARING
Defendant,)	
)	

COMES NOW the Defendant, JAVIER AGUILAR, in the above-entitled action, by and through his attorney of record, Robert P. Tilley, of the firm of TILLEY LAW OFFICE, PLLC, and hereby moves this Honorable Court for entry of its Order releasing the defendant on defendant's own recognizance or reducing bail.

THIS MOTION is made on the grounds that the offense with which the defendant is charged is a bailable offense; that the bail now set is excessive; and that bail is unnecessary in that the defendant can be safely released on defendant's own recognizance.

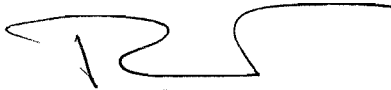
THIS MOTION is based on the pleadings, papers, records, and files in the above-entitled action.

NOTICE OF HEARING: NOTICE IS HEREBY GIVEN that attorney for Defendant will bring on for hearing the above Motion before the above-entitled Court the **31st day of July, 2009**, at the hour of **9:00 a.m.**, or as soon thereafter as counsel may be heard.

CERTIFICATE OF SERVICE: This certifies that a true and correct copy of the above and foregoing instrument was delivered to the Canyon County Prosecuting Attorney's office by placing a copy in their box at the clerk's office at the Canyon County Courthouse.

DATED this 23 day of July, 2009.

TILLEY LAW OFFICE, PLLC

A handwritten signature in black ink, appearing to be 'R. Tilley', written over a horizontal line.

Robert P. Tilley
Attorney for Defendant

Robert P. Tilley
Tilley Law Office, PLLC
8 Sixth Street N., Suite 103
Nampa, ID 83687
(208) 461-8100
(208) 461-8900 fax

Attorney for Defendant

FILED
A.M. P.M.
JUL 30 2009
CANYON COUNTY CLERK
DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

JAVIER AGUILAR,

Defendant.

CASE NO. CR 09-24815 C

**MOTION TO UNSEAL
GRAND JURY TRANSCRIPT**

COMES NOW the Defendant, JAVIER AGUILAR, by and through his attorney of record, Robert P. Tilley, and moves this Court to enter an order unsealing the Grand Jury transcript in the above-entitled matter and releasing same to the Defendant's attorney, pursuant to Idaho Criminal Rule 6.3(c).

Dated this 30 day of July 2009.



Robert P. Tilley
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was hand delivered to the Canyon County Prosecuting Attorney's office on this 30 day of July 2009.

Cindy Nunez
Cindy Nunez, Legal Assistant
Tilley Law Office, PLLC

Robert P. Tilley
Tilley Law Office, PLLC
8 Sixth Street N., Suite 103
Nampa, ID 83687
(208) 461-8100
(208) 461-8900 fax

Attorney for Defendant

FILED
A.M. P.M.
JUL 30 2009

CANYON COUNTY CLERK
DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

JAVIER AGUILAR,


Defendant.

CASE NO. CR 09-24815 C

**MOTION FOR AN ORDER TO
PRODUCE THE RECORD OF
GRAND JURY PROCEEDINGS**

COMES NOW Robert P. Tilley, Defendant's Attorney of Record in the above-entitled case now pending before this Honorable Court, and requests production of the record of the Grand Jury proceedings leading to the Indictment of the above-named Defendant, pursuant to Idaho Criminal Rules 6.3(c).

Dated this 30 day of July 2009.


Robert P. Tilley
Attorney for Defendant

000025

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was hand delivered to the Canyon County Prosecuting Attorney's office on this 30 day of July 2009.

Cindy Nunez
Cindy Nunez, Legal Assistant
Tilley Law Office, PLLC

000026

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **GREGORY M. CULET** DATE: **JULY 31, 2009**

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
JAVIER AGUILAR,)
)
Defendant.)
_____)

COURT MINUTES
CASE NO: **CR-2009-24815-C**
TIME: 9:00A.M.
REPORTED BY: Laura Whiting
DCRT1 (9:07 – 9:15)

This having been the time heretofore set for **arraignment** in the above entitled matter, the State was represented by Mr. Aaron Bazzoli, Deputy Prosecuting Attorney for Canyon County, and the defendant appeared in court with counsel, Mr. Robert Tilley.

The Court determined the defendant's true name is charged and advised the defendant that an Indictment had been filed, charging him with the felony offense of **Lewd Conduct with a Minor Under Sixteen, in Counts I, II, and III**, each carrying a maximum possible penalty of life imprisonment and a \$50,000.00 fine. The Court further advised the defendant that the potential penalties could run consecutive upon conviction.

The Court provided the defendant with a copy of the Indictment.

The Court executed the Order to Unseal the Grand Jury transcripts and the Order to Produce Grand Jury Transcripts.

The Court determined the defendant had sufficient time to review the nature of the charges with his attorney and waived formal reading of the same.

Mr. Tilley indicated that the defendant would enter pleas of **not guilty** at this time and **demand his right to speedy trial**.

The Court set this matter for **pretrial conference on October 5, 2009 at 3:00 p.m. before Judge Ford**, and a **five (5) day jury trial to commence October 26, 2009 at 9:00 a.m. before Senior Judge Morfitt**.

In answer to the Court's inquiry, Mr. Tilley requested he be heard on the motion for bond reduction.

The Court noted the motion was argued in Magistrate Court on July 16, 2009 and determined the parties were prepared to proceed.

Mr. Tilley presented arguments in support of the motion for bond reduction, requesting the Court extend the No Contact Order if necessary.

Mr. Bazzoli presented arguments in opposition of a bond reduction, noting that the defendant had a 247-Immigration Hold, as he is not a United States resident.

Mr. Tilley indicated that the defendant is a United States resident, and has a valid card.

The Court expressed opinions and **denied** the Motion to Reduce Bond.

The defendant was remanded to the custody of the Canyon County Sheriff pending further proceedings or the posting of the bond.

CUTRALER
Deputy Clerk

Robert P. Tilley
Tilley Law Office, PLLC
8 Sixth Street N., Suite 103
Nampa, ID 83687
(208) 461-8100
(208) 461-8900 fax

Attorney for Defendant

FILED
A.M. 2:34 P.M.
AUG 07 2009 ✓
CANYON COUNTY CLERK
M BECK, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

JAVIER AGUILAR,

Defendant.

CASE NO. CR 09-24815 C

ORDER UNSEALING
GRAND JURY TRANSCRIPT

Pursuant to Defendant's Motion to Unseal Grand Jury transcript, and good cause appearing therefore, the Court hereby ORDERS the Grand Jury transcript in the above-entitled matter UNSEALED.

Dated this 31 day of Dec 2009.


DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing document were delivered to the following:

Canyon County Prosecuting Attorney
1115 Albany Street
Caldwell, ID 83605

☐ U. S. Mail
☒ Hand delivered
☐ Facsimile

Robert P. Tilley
Tilley Law Office, PLLC
8 Sixth St. N., Suite 103
Nampa, ID 83687

☐ U. S. Mail
☒ Hand delivered
☐ Facsimile

Dated this 7th day of August, 2009.

By: W Beck
Deputy Clerk

Robert P. Tilley
Tilley Law Office, PLLC
8 Sixth Street N., Suite 103
Nampa, ID 83687
(208) 461-8100
(208) 461-8900 fax

Attorney for Defendant

F I L E D
A.M. 2:35 P.M.
AUG 07 2009 ✓
CANYON COUNTY CLERK
M BECK, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

JAVIER AGUILAR,

Defendant.

)
)
) **CASE NO. CR 09-24815 C**
)
) **ORDER TO PRODUCE GRAND**
) **JURY TRANSCRIPT**
)
)
)
)

The above named Defendant having filed a Motion for an Order to Produce the record of the Grand Jury Proceedings leading to the Indictment of the above named Defendant which was held on July 15, 2009. The Court Clerk of the Canyon County will commence the preparation of the transcript.

IT IS HEREBY ORDERED AND THIS DOES ORDER, that a transcript of the Grand Jury proceedings held on July 15, 2009, be completed within thirty (30) days of the date of this order.

IT IS FURTHER ORDERED, that:

1. Upon receipt of the transcripts, the Court will deliver one copy to the Prosecuting Attorney. The Prosecuting Attorney shall have five (5) working days to review the transcript and file any objection to any portion of the transcript or request the retraction of any part of the transcript. If there is an objection, the Court will review the transcript in camera and make any necessary deletions and make a record of such deletions and the reasons for deletions. Such record will be sealed for review by an appellate Court.

2. In the absence of an objection by the Prosecuting Attorney to the completed transcript within the five (5) working days, a copy of the transcript will be furnished to the Defendant's Attorney.

3. The transcript shall be furnished to the Defendant's attorney as soon as possible but shall be furnished no later than ten (10) days before trial.

4. The above-named Defendant is represented by Robert Tilley and said transcript is to be provided at Defendant's expense.

IT IS FURTHER ORDERED, that all such transcripts of the Grand Jury testimony are to be used exclusively by the said attorneys in preparation for the defense of said case. None of the material may be copied or disclosed to any person other than the attorneys, their deputies, assistants, associates or witnesses, without specific authorization by the Court. Counsel may discuss the contents of the transcript with their client or witnesses, but may not release the transcripts themselves.

DATED this 31 day of July 2009.


DISTRICT JUDGE

1. Upon receipt of the transcripts, the Court will deliver one copy to the Prosecuting Attorney. The Prosecuting Attorney shall have five (5) working days to review the transcript and file any objection to any portion of the transcript or request the retraction of any part of the transcript. If there is an objection, the Court will review the transcript in camera and make any necessary deletions and make a record of such deletions and the reasons for deletions. Such record will be sealed for review by an appellate Court.

2. In the absence of an objection by the Prosecuting Attorney to the completed transcript within the five (5) working days, a copy of the transcript will be furnished to the Defendant's Attorney.

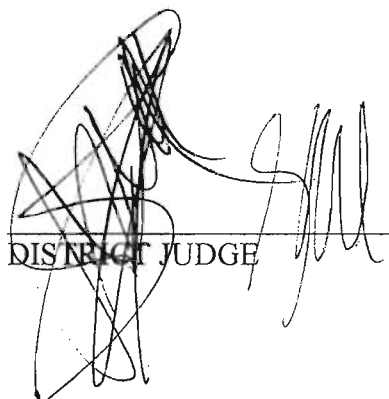
3. The transcript shall be furnished to the Defendant's attorney as soon as possible but shall be furnished no later than ten (10) days before trial.

4. The above-named Defendant is represented by Robert Tilley and said transcript is to be provided at Defendant's expense.

IT IS FURTHER ORDERED, that all such transcripts of the Grand Jury testimony are to be used exclusively by the said attorneys in preparation for the defense of said case. None of the material may be copied or disclosed to any person other than the attorneys, their deputies, assistants, associates or witnesses, without specific authorization by the Court. Counsel may discuss the contents of the transcript with their client or witnesses, but may not release the transcripts themselves.

DATED this 31 day of July 2009.

Deputy


DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing document were delivered to the following:

Canyon County Prosecuting Attorney
1115 Albany Street
Caldwell, ID 83605

☐ U. S. Mail
☒ Hand delivered
☐ Facsimile

Robert P. Tilley
Tilley Law Office, PLLC
8 Sixth St. N., Suite 103
Nampa, ID 83687

☐ U. S. Mail
☒ Hand delivered
☐ Facsimile

Dated this 7th day of August, 2009.

By: *W. Beck*
Deputy Clerk

bm

JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
A.M. *2:55* P.M.

SEP 21 2009

CANYON COUNTY CLERK
B RAYNE, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO	)	CASE NO. CR2009-24815
)	
Plaintiff,	)	DEMAND FOR NOTICE OF
	)	DEFENSE OF ALIBI
vs.)	
)	
JAVIER GUILLEN AGUILAR)	
)	
Defendant)	
_____)	

TO: JAVIER GUILLEN AGUILAR, the above named Defendant, and to Dennis M. Charney,
Attorney for the above named Defendant:

COMES NOW, JOHN T. BUJAK, Canyon County Prosecuting Attorney, who
demands that the Defendant serve upon him within ten (10) days from the date of this notice or at
such other time as the Court may direct, a written notice of the Defendant's intention to offer a
defense of alibi.

Such notice by the Defendant shall state the specific place or places at which the
Defendant claims to have been at the time of the alleged offense and the names and addresses of
the witnesses upon whom the Defendant intends to rely to establish such alibi.

If prior to or during trial the Defendant learns of additional witnesses whose
identity, if known, should have been included in this information furnished pursuant to this

Demand, the Defendant or the Defendant's attorney shall promptly notify the Canyon County Prosecuting Attorney of the existence, identity and addresses of such additional witness or witnesses.

The failure of the Defendant and the Defendant's attorney to comply with this Demand may result in the exclusion of the testimony of any undisclosed witnesses which may be offered by the Defendant to establish said alibi.

This Demand was made and based upon Idaho Code Provision 19-519.

DATED This 18th day of September, 2009.



Bryan Taylor
Deputy Prosecuting Attorney

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was served upon the attorney for the defendant, Dennis M. Charney at 1191 E. Iron Eagle Drive Eagle, ID 83616, by First Class Mail to the foregoing address, on or about the 18th day of September, 2009.



Bryan Taylor
Deputy Prosecuting Attorney

bm

JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany &
Caldwell, Idaho 83606-0668

Telephone: (208) 454-7391

FILED
SEP 22 2009
CANYON COUNTY CLERK
C ATKINSON, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO)	
	)	CASE NO. CR2009-24815
Plaintiff,)	
	)	NOTICE OF INTENT
vs.	)	RULE 404(b) I.R.E.
	)	EVIDENCE
JAVIER GUILLEN AGUILAR,)	
)	
Defendant.)	
_____)	

COMES NOW, BRYAN TAYLOR, Deputy Prosecuting Attorney for Canyon
County, State of Idaho, and hereby moves this Court in Limine for an Order, before trial and
selection of jury to instruct the State, defendant and his counsel as set forth on the following
grounds:

Since the State is aware of prior bad acts by defendant against the alleged victims,

NOTICE OF INTENT
RULE 404(b) I.R.E. EVIDENCE 1
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ORIGINAL

such acts become relevant under I.R.E. 404(b) to show intent, lack of mistake, motive, opportunity, preparation, plan, knowledge, or identity.

1. All acts of sexual contact which occurred with the named victims should be admitted to prove common scheme or plan to sexually exploit young boys.

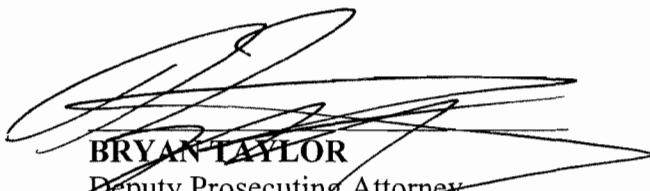
The State should be allowed to use pleadings, convictions, testimony, reports, audio tapes, questions or arguments which inform the jury of such acts.

This Notice should be allowed because it would constitute the best evidence of sexual intent, preparation, plan, motive opportunity, lack of mistake and knowledge.

WHEREFORE, the State respectfully requests the Court to allow the State to introduce evidence, testimony, interrogate concerning and convey to the jury, the above mentioned facts. The State further requests this Court to instruct the defendant and his counsel not to make any reference to the fact that this Notice has been filed and allowed.

The State requests oral argument in support of the relief sought herein.

DATED This 21 day of September, 2009.


BRYAN TAYLOR
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing NOTICE OF INTENT was delivered to the Defendant's attorney of record, by mailing said Notice of Intent in to Dennis Charney, 1191 East Iron Eagle Dr. Eagle, ID 83616, on or about this 21st day of September, 2009.



BRYAN TAYLOR
Deputy Prosecuting Attorney

NOTICE OF INTENT

RULE 404(b) I.R.E. EVIDENCE

3

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THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF CANYON
PRETRIAL CONFERENCE

THE STATE OF IDAHO,

Plaintiff,

-vs-

Javier Aguilar

Defendant.

Case No. CR- 09-24815C

Date: 10/05/09

Judge: Bradly S. Ford

Tape: DRK15 (318-323)

Reporter: Yvonne Hyde Gier

APPEARANCES:

☒ Defendant

☒ Defendant's Attorney

☐ Interpreter

☒ Prosecutor

Dennis Charnier

Erica Kallin

FAILURE TO APPEAR: Defendant failed to appear. It is Ordered

☐ bench warrant issued--bail \$ _____

☐ bond forfeited.

☐ jury trial vacated.

PROCEEDINGS:

☐ Pretrial waived.

☒ Pretrial reset to 02/08/10 @ 3:00 pm

Judge Ford

☐ Pretrial held on the record.

☐ Each of counsel disclosed their prospective witnesses.

☐ The State provided discovery to the defense.

☐ The Court directed the State to provide defense with ☐ discovery. ☐ a copy of the police report.

☐ This case consolidated with _____ set for hearing on _____

_____ before Judge _____

☐ Plea offer ☐ stated on the record. ☐ refused. ☐ withdrawn.

☐ Status conference _____ before Judge _____

☒ Trial date of 23-26 February 2010 @ 9:00 am before Judge Ford noted.

CUSTODY:

☐ Released on written citation promise to appear.

☒ Released on bond previously posted.

☐ Released on own recognizance (O.R.).

☐ Remanded to the custody of the sheriff.

☐ Released to pre-trial release officer.

☐ Bail set at \$ _____

OTHER: Continued upon stipulation of the parties. The defendant waived his constitutional and statutory right to speedy trial. Ms. Kallin noted the State intended to file 404(b) motions. The Court reminded the defendant the no contact order previously entered remained in effect.

D. Kallin, Deputy Clerk

FILED
A.M. 10:00 P.M.

DEC 10 2009

CANYON COUNTY CLERK
V TRUJILLO, DEPUTY

bm.

JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany &
Caldwell, Idaho 83606-0668

Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO)	
	)	CASE NO. CR2009-24815
Plaintiff,)	
	)	AMENDED NOTICE OF INTENT
vs.	)	RULE 404(b) I.R.E.
	)	EVIDENCE
JAVIER GUILLEN AGUILAR,)	
)	
Defendant.)	
_____)	

COMES NOW, BRYAN TAYLOR, Deputy Prosecuting Attorney for Canyon
County, State of Idaho, and hereby moves this Court in Limine for an Order, before trial and
selection of jury to instruct the State, defendant and his counsel as set forth on the following
grounds:

Since the State is aware of prior bad acts by defendant against the alleged victims,

NOTICE OF INTENT
RULE 404(b) I.R.E. EVIDENCE 1

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ORIGINAL

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such acts become relevant under I.R.E. 404(b) to show intent, lack of mistake, motive, opportunity, preparation, plan, knowledge, or identity.

1. All acts of sexual touching with minor boys to prove common scheme or plan to sexually exploit young boys.

The State should be allowed to use pleadings, convictions, testimony, reports, audio tapes, questions or arguments which inform the jury of such acts.

This Notice should be allowed because it would constitute the best evidence of sexual intent, preparation, plan, motive opportunity, lack of mistake and knowledge.

WHEREFORE, the State respectfully requests the Court to allow the State to introduce evidence, testimony, interrogate concerning and convey to the jury, the above mentioned facts. The State further requests this Court to instruct the defendant and his counsel not to make any reference to the fact that this Notice has been filed and allowed.

The State requests oral argument in support of the relief sought herein.

DATED This 9 day of December, 2009.


ERICA M. KALLIN
Deputy Prosecuting Attorney

AMENDED NOTICE OF INTENT
RULE 404(b) I.R.E. EVIDENCE


2

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Data\NewDawnTech\JustWare5\ccjwws_JustWareWebService\DocumentsTemp\24\Aguilar Javier_404b.doc

000043

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing NOTICE OF INTENT was delivered to the Defendant's attorney of record, by mailing said Notice of Intent in to Dennis Charney, 1191 East Iron Eagle Dr. Eagle, ID 83616, on or about this 9 day of December, 2009.


ERICA M. KALLIN
Deputy Prosecuting Attorney

NOTICE OF INTENT

RULE 404(b) I.R.E. EVIDENCE

3

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bm

JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
A.M. P.M.
JAN 27 2010
CANYON COUNTY CLERK
S ROGERS, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

Javier Guillen Aguilar,

Defendant.

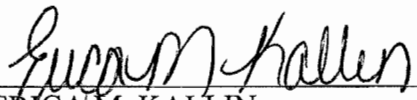
CASE NO. CR2009-24815

**MOTION PURSUANT TO
IDAHO CODE 9-1805**

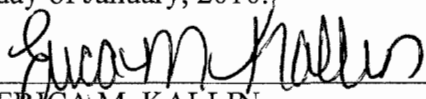
COMES NOW, ERICA M. KALLIN, Deputy Prosecuting Attorney, Canyon County,
State of Idaho, hereby moves this court to modify courtroom for reasons that one of the victims,
C.B., has attempted suicide as a result of this case. The State has concerns for his health if
forced to testify directly in front of the defendant. The state is requesting counsel tables for the
trial be reversed so as to shield the victim from the defendant.

MOTION PURSUANT TO
IDAHO CODE 9-1805

DATED This 26 day of January, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was served upon the attorney for the defendant, Dennis M. Charney at 1191 E. Iron Eagle Drive Eagle, ID 83616, by First Class Mail to the foregoing address, on or about the 26 day of January, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

bm

F I L E D
A.M. P.M.

JAN 27 2010

CANYON COUNTY CLERK
S ROGERS, DEPUTY

JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

JAVIER GUILLEN AGUILAR

Defendant

CASE NO. CR2009-24815

**WITNESS LIST, EXHIBIT LIST
AND NOTICE OF INTENT**

COMES NOW, ERICA M. KALLIN, Deputy Prosecuting Attorney, Canyon
County, State of Idaho, and submits the following list of witnesses and exhibits the State intends
to use at jury trial:

WITNESS LIST

Brice King, NPD
J.B.
Korrey Brewer
C.B
Lori Barnes
J.A
Taleetha Fuentes
C.E.
Sharon Bakken
Natividad Pinon

WITNESS LIST, EXHIBIT LIST
AND NOTICE OF INTENT

Zach Brewer
Don Peck, NPD
Dr. Michael Sexton, CARES
Mydell Yeager, Expert Witness

EXHIBIT LIST


1. Three (3) CDs
2. Two (2) DVDs

NOTICE OF INTENT

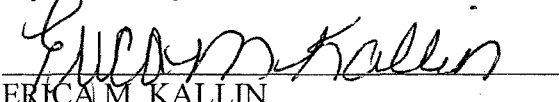
Notice is hereby given of the State's intent to use the following audio/video (or electronic) recordings at trial.

1. Audio from Detectives Weeks, Orvis and King and Palfreyman

DATED This 27 day of January, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was served upon the attorney for the defendant, Dennis M. Charney at 1191 E. Iron Eagle Drive Eagle, ID 83616, by First Class Mail to the foregoing address, on or about the 27 day of January, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

bm

JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
JAN 27 2010


CANYON COUNTY CLERK
S ROGERS, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	CASE NO. CR2009-24815
)	
Plaintiff,)	
	)	STATE'S PROPOSED
vs.	)	JURY INSTRUCTIONS
)	
JAVIER AGUILAR,)	
)	
Defendant.)	
_____)	

COMES NOW, BRYAN TAYLOR, Deputy Prosecuting Attorney and submits
the following jury instructions in the above referenced case.

DATED This 26 day of January, 2010.


BRYAN TAYLOR
Deputy Prosecuting Attorney

STATE'S PROPOSED JURY INSTRUCTIONS 1

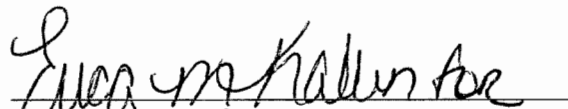
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000049

ORIGINAL

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the Proposed Jury Instructions was delivered to the Defendant's attorney of record by mailing said copy to Dennis M. Charney, 1191 East Iron Eagle Dr., Eagle, ID 83616 on or about the 26 day of January, 2010.


BRYAN TAYLOR
Deputy Prosecuting Attorney

ICJI 208
"ON OR ABOUT" EXPLAINED

INSTRUCTION NO. ____

It is alleged that the crime charged was committed "on or about" a certain date. If you find the crime was committed, the proof need not show that it was committed on that precise date.

ICJI 929
LEWD AND LASCIVIOUS CONDUCT

INSTRUCTION NO. ____

In order for the defendant to be guilty of Lewd and Lascivious Conduct, the state must prove each of the following:

1. On or about January, 2002 through July 15, 2009
2. in the state of Idaho
3. the defendant Javier Aguilar committed an act of genital-buttocks contact and/or manual-genital contact and/or oral-genital contact or any other lewd or lascivious act upon or with the body of J.B. (DOB: [REDACTED]).
4. J.B. (DOB: [REDACTED]) was a child under sixteen (16) years of age, and
5. the defendant committed such act with the specific intent to arouse, appeal to, or gratify the lust or passions or sexual desires of the defendant, of such child, or of some other person.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

ICJI 929
LEWD AND LASCIVIOUS CONDUCT

INSTRUCTION NO. ____

In order for the defendant to be guilty of Lewd and Lascivious Conduct, the state must prove each of the following:

1. On or about January 2002 through July 15, 2009
2. in the state of Idaho
3. the defendant Javier Aguilar committed an act of [genital-buttocks contact and/or manual-genital contact or any other lewd or lascivious act upon or with the body of C.B. (DOB: [REDACTED]),
4. C.B. (DOB [REDACTED]) was a child under sixteen (16) years of age, and
5. the defendant committed such act with the specific intent to arouse, appeal to, or gratify the lust or passions or sexual desires of the defendant, of such child, or of some other person.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

ICJI 929
LEWD AND LASCIVIOUS CONDUCT

INSTRUCTION NO. ____

In order for the defendant to be guilty of Lewd and Lascivious Conduct, the state must prove each of the following:

1. On or about January, 2004 through July 15, 1009
2. in the state of Idaho
3. the defendant Javier Aguilar committed an act of genital-buttocks contact and/or oral-genital contact and/or [manual-genital contact or any other lewd or lascivious act upon or with the body of J.A. (DOB: [REDACTED]),
4. J.A. (DOB: [REDACTED]), was a child under sixteen (16) years of age, and
5. the defendant committed such act with the specific intent to arouse, appeal to, or gratify the lust or passions or sexual desires of the defendant, of such child, or of some other person.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

ICJI 930
LEWD CONDUCT—(TOUCHING)

INSTRUCTION NO. ____

To constitute lewd and lascivious conduct, it is not necessary that bare skin be touched.
The touching may be through the clothing.

PASSIONS NEED NOT BE ACTUALLY AROUSED

INSTRUCTION NO. ____

The law does not require as an essential element of the crime that the lust, passions, or sexual desires of either the defendant or J.B. (DOB: [REDACTED]) be actually aroused, appealed to, or gratified.

PASSIONS NEED NOT BE ACTUALLY AROUSED

INSTRUCTION NO. ____

The law does not require as an essential element of the crime that the lust, passions, or sexual desires of either the defendant or C.B. (DOB: [REDACTED]) be actually aroused, appealed to, or gratified.

PASSIONS NEED NOT BE ACTUALLY AROUSED

INSTRUCTION NO. ____

The law does not require as an essential element of the crime that the lust, passions, or sexual desires of either the defendant or J.A. (DOB: [REDACTED]) be actually aroused, appealed to, or gratified.

ICJI 932
CONSENT OF VICTIM NO DEFENSE

INSTRUCTION NO. ____

You are instructed that it is not a defense to the crime of Lewd Conduct With A Minor Under Sixteen that J.B. (DOB: [REDACTED]) may have consented to the alleged conduct.

ICJI 932
CONSENT OF VICTIM NO DEFENSE

INSTRUCTION NO. ____

You are instructed that it is not a defense to the crime of Lewd Conduct With A Minor Under Sixteen that C.B. (DOB: [REDACTED]) may have consented to the alleged conduct.

ICJI 932
CONSENT OF VICTIM NO DEFENSE

INSTRUCTION NO. ____

You are instructed that it is not a defense to the crime of Lewd Conduct With A Minor Under Sixteen that J.A. (DOB: [REDACTED]) may have consented to the alleged conduct.

JAN 27 2010

CANYON COUNTY CLERK
S ROGERS, DEPUTY

bm

JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany
Caldwell, Idaho 83606-0668

Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO)	
	)	CASE NO. CR2009-24815
Plaintiff,)	
	)	MOTION IN LIMINE
vs.)	
)	
JAVIER AGUILAR,)	
)	
Defendant.)	
_____)	

COMES NOW, ERICA M. KALLIN, Deputy Prosecuting Attorney for Canyon
County, State of Idaho, and hereby moves this Court in Limine for an Order, before trial and
selection of jury to instruct the State, defendant and his counsel as set forth on the following
grounds:

Since the State has become aware of prior bad acts by defendant against other

minors, such acts become relevant under I.R.E. 404(b) to show intent, lack of mistake, motive, opportunity, preparation, plan, knowledge, or identity.

1. Whether acts of sexual contacts and/or grooming behavior which occurred against other minor males should be admitted to prove common scheme or plan to sexually exploit young boys.


The State should be allowed to use pleadings, convictions, testimony, reports, audio tapes, questions or arguments which inform the jury of such acts.

This Motion should be allowed because it would constitute the best evidence of sexual intent, preparation, plan, motive opportunity, lack of mistake and knowledge.

WHEREFORE, the State respectfully requests the Court to allow the State to introduce evidence, testimony, interrogate concerning and convey to the jury, the above mentioned facts. The State further requests this Court to instruct the defendant and his counsel not to make any reference to the fact that this Motion has been filed and allowed.

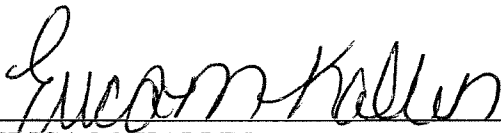
The State requests oral argument in support of the relief sought herein.

DATED This 27 day of January, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION IN LIMINE was mailed to the Defendant's attorney of record, Dennis Charney, at his post office mailing address on or about this 27 day of January, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

04011568

REPORT NUMBER

City of Nampa
Police Department
INCIDENT REPORT



NARRATIVE

REPORTED BY 0227 MARTINEZ, STEVE

REPORT FILED 10/18/2004

On 10/17/04, I was dispatched to the Nampa Police Department lobby, reference a battery that took place two weeks prior. Upon arrival I met with the reporting party, Sharon Bakken who advised her son, C.E. [REDACTED] was battered.

Bakken advised C.E. [REDACTED] had stayed the night at his friend's house, 2813 Muskrat on Saturday, October 2nd. Bakken said C.E. [REDACTED] didn't mention anything to her when she picked him up the next morning. Bakken said her other son was the one who told her about the incident. Bakken's other son said he was going to spend the night at the above address so C.E. [REDACTED] told him whatever you do don't sleep on the couch.

C.E. [REDACTED] I asked C.E. [REDACTED] if he would tell me what had happened on the night he stayed at his friend's house. C.E. [REDACTED] advised he and his friends were watching a movie, around 0300 hrs he was on the couch watching the movie while everyone else was asleep. C.E. [REDACTED] said his friend's father, Javier Aguilar started rubbing his back. C.E. [REDACTED] said he wasn't sure what was going on so he just layed there. C.E. [REDACTED] said Aguilar rubbed his back up and down, along with his head and neck area. C.E. [REDACTED] said while Aguilar was rubbing him, Aguilar had asked him to go into his office with him for some "candy". C.E. [REDACTED] said he didn't say anything and put the covers over his head. C.E. [REDACTED] said Aguilar continued to rub him until he left around 0400 hrs. C.E. [REDACTED] said he didn't say anything to his mother because he didn't know what to say.

Javier Aguilar works at Pioneer Title his work phone number is 465-6655, cell phone 250-1904, and his home phone is 463-1522.

Request Detectives handle the above case.

I downloaded my audio recording to the October file of the computers Y drive.

Officer Steve Martinez

000065

04011568

REPORT NUMBER

City of Nampa
Police Department
SUPPLEMENTAL INCIDENT REPORT



NARRATIVE

SUPPLEMENT DATE 10/27/2004
APPROVAL DATE 11/09/2004

OFFICER 0190 PECK JR, DONALD
OFFICER 0137 WEEKES, ANGELA

CE. On October 20, 2004, I spoke with Javier Aguilar at his residence. I explained to him why I was at his residence and inquired about the events that took place. Aguilar explained that C [REDACTED] E [REDACTED] was at his residence spending the night with his son. At about 0200 hr. [REDACTED] was on the couch watching a movie. Aguilar told [REDACTED] that he should go to sleep because they were going to the races that date and he would be tired. Aguilar said that when he told [REDACTED] this he rubbed his head and back. Aguilar stated that this is what he does with his children when trying to get them to go to sleep. Aguilar further stated that he did not have an office in his home. He stated that prior to going to the races he takes the kids to his work and they pick up candy to take with. He stated that he talked to [REDACTED] CE reference to this.

I explained to Aguilar that there is touching that is appropriate with his own children, that might not be appropriate with other people's children. He stated that he did not think about it. He further stated that after talking to me he realizes where that might not be appropriate.

I spoke with Sharron Bakken on October 25, 2004, reference to this case. I explained to her my conversation with Aguilar. She stated that she understood that there was not anything that we could do reference to this. She asked if she over reacted and I assured her that she did not. I explained to Bakken that we now had this as a reference in case this happens again in the future. She stated that she appreciated the investigation.

On November 2, 2004, I spoke with Brian Walker reference to this case. He stated that there is not enough at this time to pursue any charges against Aguilar.

Case Closed Prosecution Declined

000066

DENNIS M. CHARNEY, ISB #4610
CHARNEY AND ASSOCIATES, PLLC
1191 East Iron Eagle Drive
Eagle, Idaho 83616
Telephone: (208) 938-9500
Facsimile: (208) 938-9504

Attorney for Defendant

FILED
A.M. P.M.

FEB 01 2010

CANYON COUNTY CLERK
B RAYNE, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
)	
Plaintiffs,	)	Case No. CR-2009-24815-C
)	
v.)	
)	
JAVIER AGUILAR,	)	OBJECTION TO MOTION IN
	)	LIMINE
Defendant.)	
_____)	

Javier Aguilar, by and through his attorney of record, Dennis M. Charney, hereby moves this court to deny the Motion in Limine made by the State.

It appears that the State seeks to introduce police reports and/or witness testimony involving an incident in October of 2004. The State seeks to admit the testimony pursuant to Idaho Rule of Evidence 404(b) to show intent, lack of mistake, motive, opportunity, preparation, plan, knowledge, or identity. The State does not identify which of these particular exceptions to the Rule are being relied on, nor does it identify any other evidence it seeks to admit at the trial.

OBJECTION TO MOTION IN LIMINE - 1

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As the Court is well aware, blanket motions of this nature alleging that the evidence is admissible without any demonstration that the evidence is, in fact, being offered for one of the reasons permitted by Rule 404(b) should be viewed with scrutiny. In this case, the State has presented the Court and counsel with scant reasons articulating why the State should be allowed to use pleadings, convictions, testimony, reports, audio tapes, questions or arguments which inform the jury of such acts. Responding to this motion is made extremely complicated by the State's boilerplate assertions. With respect to Mr. Aguilar, there are no prior pleadings or convictions. The hearsay rule would prevent admission of reports. Any prior testimony regarding this matter would have been presented to the grand jury and not subject to cross-examination. As such, it should not be permitted. In short, the Defendant has no opportunity whatsoever to intelligently respond to the Motion.

It is the position of the Defendant that this Court should view the State's motion with great caution. The Idaho Supreme Court, in the case of *State v. Grist*, recently determined that a trial Court must be very cautious when deciding whether to admit prior bad acts. The Court held that the trial court must first determine whether there is sufficient evidence to establish the other crime or wrong as fact. Next, the trial court must also determine whether the fact of another crime or wrong, if established, would be relevant. Evidence of uncharged misconduct must be relevant to a material and disputed issue concerning the crime charged, other than propensity. Such evidence is only relevant if the jury can reasonably conclude that the act occurred and that the Defendant was, in fact, the actor.

Based on the motion filed by the State, the trial court, in this case, cannot determine whether there is sufficient evidence to establish the other crime or wrong as fact because the State has not presented the Court with said evidence. Therefore, it is impossible for the trial

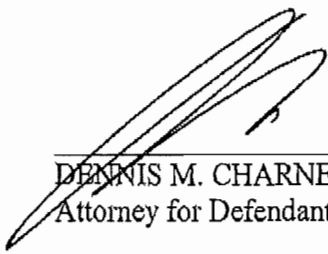
OBJECTION TO MOTION IN LIMINE - 2

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court to determine whether the fact of another crime or wrong would be relevant. Finally, because of the State's failure to articulate what evidence it seeks to offer by way of the 404(b) exception, the Court cannot engage in the Rule 403 balancing test mandated by the Idaho Supreme Court in the *Grist* decision.

For the reasons set forth above, the Court must deny the Motion in Limine filed by the State.

Respectfully submitted this 17 day of February, 2010.




DENNIS M. CHARNEY
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of February, 2010, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Canyon County Prosecutor
1115 Albany St
Caldwell, Id 83605
Fax: 454-7474

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile



DENNIS M. CHARNEY

DENNIS M. CHARNEY, ISB #4610
CHARNEY AND ASSOCIATES, PLLC
 1191 East Iron Eagle Drive
 Eagle, Idaho 83616
 Telephone: (208) 938-9500
 Facsimile: (208) 938-9504

Attorney for Defendant

FILED
 A.M. P.M.

FEB 01 2010

CANYON COUNTY CLERK
 B RAYNE, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
)	
Plaintiffs,	)	Case No. CR-2009-24815-C
)	
v.)	
	)	OBJECTION PURSUANT TO IDAHO
JAVIER AGUILAR,	)	CODE 9-1805
)	
Defendant.)	
_____)	

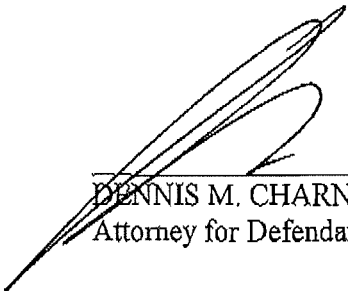
Javier Aguilar, by and through his attorney of record, Dennis M. Charney, hereby moves this court to deny the Motion made by the State pursuant to Idaho Code 9-1805. As the Court is well aware, Mr. Aguilar has the right to see, confront, and cross-examine those witnesses who are called to testify against him. The proposal advanced by the State does nothing more than draw attention to this particular witness in an attempt to bolster his credibility when no such bolstering is necessary.

OBJECTION PURSUANT TO IDAHO CODE 9-1805 - 1

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Additionally, in the absence of any Affidavit, medical testimony or other sworn information, the State makes the bold and sweeping statement that C.E. has attempted suicide as a result of this case. This is an inflammatory statement which is not supported with any evidence. Unless and until professional testimony is offered to this court, such statements should be rejected unless and until they can be proven.

Respectfully submitted this 1st day of February, 2010.



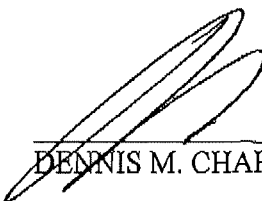
DENNIS M. CHARNEY
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2010, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Canyon County Prosecutor
1115 Albany St
Caldwell, Id 83605
Fax: 454-7474

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile



DENNIS M. CHARNEY

OBJECTION PURSUANT TO IDAHO CODE 9-1805 - 2

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JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany
Caldwell, Idaho 83605

Telephone: (208) 454-7391

F I L E D
A.M. P.M.

FEB - 2 2010

CANYON COUNTY CLERK
S ROGERS, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO)	
	)	CASE NO. CR2009-24815
Plaintiff,)	
	)	AFFIDAVIT OF
vs.	)	ERICA M. KALLIN
)	
JAVIER AGUILAR,)	
)	
Defendant.)	
)	

STATE OF IDAHO)

ss.

County of Canyon)

I, Erica M. Kallin, being first duly sworn, upon oath, deposes and says:

1. I am the handling attorney in the above entitled case of State of Idaho v. Javier Aguilar.

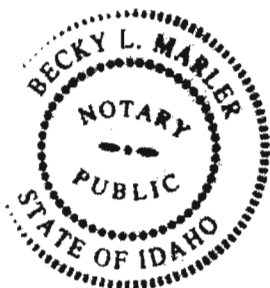
AFFIDAVIT OF
ERICA M. KALLIN

2. Mr. Zach Brewer is a potential victim, and a material witness, in this matter;
3. Mr. Brewer has not kept a current address and/or telephone number with the Canyon County Prosecuting Attorney's Office, despite a request to do so, and the State believes that Mr. Brewer is purposefully hiding to avoid subpoena service;
4. The Canyon County Prosecuting Attorney's Office has made numerous attempts to locate and/or keep in contact with Mr. Brewer, including efforts by the Prosecuting Attorney's Office Victim Witness Coordinator Jackie Smith and Investigators, Bill Crawford and Ken Boals
5. Mr. Crawford and Mr.Boals made numerous attempts to find Mr. Brewer, including running a DMV check of his driver's license and attempting to locate him using NCIC, as well as numerous phone calls to his cellular phone;
6. The State has been unable to reach and serve Zach Brewer with a subpoena to appear at the Jury Trial.

DATED This 27 day of January, 2010.

Erica M. Kallin
ERICA M. KALLIN
Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 27th day of January, 2010.



Becky L. Marler
Notary Public for Idaho
Residing at: Caldwell, Idaho
My Commission Expires: 9.22.2012

AFFIDAVIT OF
ERICA M. KALLIN

bm

JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

F I L E D
A.M. P.M.

FEB - 4 2010

CANYON COUNTY CLERK
S ROGERS, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

JAVIER GUILLEN AGUILAR

Defendant.

CASE NO. CR2009-24815

**OBJECTION TO DEFENDANT'S
REQUEST FOR THE STATE TO
PROVIDE COUNSELING RECORDS**

COMES NOW, ERICA M. KALLIN, Deputy Prosecuting Attorney of the
Canyon County Prosecuting Attorney's Office, on behalf of the State of Idaho, who objects to the
Defendant's request for the State to provided counseling records regarding other witnesses, for
the reasons that:

1. The State in not intending to rely on said records at trial.
2. They are not in the State's exclusive care, custody and control.
3. The defendant has equal access to subpoena powers of the court and can
subpoena that information from the Counselor.

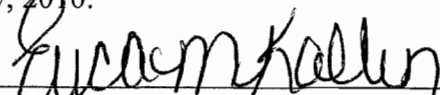
OBJECTION TO DEFENDANT'S
REQUEST FOR STATE TO
PROVIDE COUNSELING RECORDS

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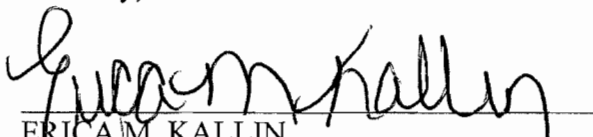
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ORIGINAL

DATED This 4 day of February, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was served upon the attorney for the defendant, Dennis M. Charney at 1191 E. Iron Eagle Drive Eagle, ID 83616, by First Class Mail to the foregoing address, on or about the 4 day of February, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **BRADLY S. FORD** DATE: FEBRUARY 08, 2010

THE STATE OF IDAHO,)	COURT MINUTES
)	
Plaintiff,)	CASE NO: CR-2009-24815-C
)	
vs.)	TIME: 3:00 P.M.
)	
JAVIER AGUILAR,)	REPORTED BY: Yvonne Hyde Gier
)	
Defendant.)	DCRT 5 (246-320)(326-331)
)	

This having been the time heretofore set for **Pretrial Conference and State's Motion in Limine** in the above entitled matter, the State was represented by Ms. Erica Kallin, Deputy Prosecuting Attorney for Canyon County, and the defendant was present in court with counsel, Mr. Dennis Charney.

The pretrial conference was held on the record and supplemented in the Pretrial Memorandum.

The Court noted the State's Motion in regard to Idaho Code 9-1805. Mr. Charney noted the defense had no objection as long as the entire trial proceeds in the same fashion. Ms. Kallin indicated that was her understanding.

Ms. Kallin presented argument and an offer of proof in regard to State's 404b Motion in Limine.

Mr. Charney objected and presented argument to the same.

The Court took the matter under advisement and indicated it would either issue a written decision or at the time of status conference announce its decision orally.

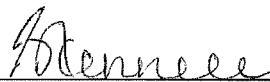
Ms. Kallin noted she filed an objection to defense's request for counseling records as the State did not have exclusive control of them.

Mr. Charney indicated it was a non-issue if the State did not have exclusive control of the records.

Ms. Kallin noted for the record the State would be filing a 412 Motion in Limine.

The Court set this matter for **status conference the 22nd day of February 2010 at 1:00 p.m.**

The defendant was released on the bond previously posted and instructed to remain in contact with his attorney.



Deputy Clerk

FEB 08 2010

CANYON COUNTY CLERK
S FENNELL, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

-vs-

Tania Aguilar
Defendant.

Case No. -CR-2009-29815

PRETRIAL MEMORANDUM

Appearances:

Prosecuting Attorney _____ Attorney for Defendant _____

- ☐ Counsel revealed to each other ☐ prior to pretrial ☐ at pretrial the evidence to be offered at trial.
- ☐ Intoximeter (or other breath test) reading _____
- ☐ Video _____
- ☒ Physical evidence: ☒ on police report ☐ other _____
- ☒ Tape recording *As disclosed*
- ☒ Oral statements: ☒ on police report ☐ other _____
- ☐ Plaintiffs' witnesses and addresses:

Disclosure on 1/27/10 - witness list

- ☒ Defendants' witnesses and addresses:

As disclosed in prior discovery responses.

No add anticipated

☒ Counsel shall reveal to each other and the Court, in writing, any additional witnesses or exhibits to the above list of the preceding evidence by 12/12, 20 at .m.

☐ Plea negotiations:

☒ Both counsel certify that the case is ready for trial on the date set.

☒ Proposed jury instructions shall be submitted to the Court and opposing counsel not less than five days prior to trial.

☐ Jury trial reset for _____, 20 at _____ a.m.

☐ Jury trial waived and case reset for court trial on _____, 20 at _____ a.m.

☐ Pretrial motions shall be filed.

☐ within _____ days of this Order.

☐ no less than _____ days prior to trial.

☐ no later than _____, 20 .

☐ Pretrial motions, timely filed, are set for hearing on _____, 20 at _____ .m.

☒ Copies of Pretrial Memorandum given to both counsel.

☒ Parties to reappear for a status conference on 2/22/10, 20 at 1:00.m. The Defendant must be personally present.

☐ Other: _____

Erika Callin
Deputy Prosecuting Attorney

Dated: 2/18/10

[Signature]
Defense Attorney

Signed: _____

[Signature]
Magistrate Judge

PRETRIAL MEMORANDUM

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8/04

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JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

F I L E D
A.M. 4:32 P.M.

FEB 16 2010

**CANYON COUNTY CLERK
M PUGA, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

JAVIER GUILLEN AGUILAR,

Defendant.

CASE NO. CR2009-24815

MOTION IN LIMINE

COMES NOW, ERICA M. KALLIN, Deputy Prosecuting Attorney for Canyon County, State of Idaho, and hereby moves this Court in Limine for an Order, before trial and selection of jury to instruct the State, defendant and his counsel as set forth on the following grounds:

The defendant shall not make any references to any prior potential abuse by someone other than the defendant. The defendant made statements to Detective King on April 18, 2007 that J.B. told his mom that his cousin had been trying to take off his clothes. Additionally one of the victims, C.B. has been previously victimized by a family member of the defendant.

This evidence is not only prejudicial but also not relevant to the charges before the court. Additionally the defendant is required to move the court prior to trial for an in-camera hearing to

MOTION IN LIMINE

determine if this evidence is admissible pursuant to I.R.E. 412. The defendant has not made a motion to admit this evidence under I.R.E. 412.


As such the State requests the Court enter an order precluding any evidence, testimony or questioning on this subject or make mention of this Motion to admit evidence under I.R.E. 412.

WHEREFORE, the State respectfully requests the Court instruct the defendant not to make mention or to introduce evidence, testimony, interrogate concerning and convey to the jury, the above mentioned facts. The State further requests this Court to instruct the defendant and his counsel not to make any reference to the fact that this Motion has been filed and allowed.

DATED This 16 day of February, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was served upon the attorney for the defendant, Dennis M. Charney at 1191 E. Iron Eagle Drive Eagle, ID 83616, by First Class Mail to the foregoing address, on or about the 16 day of February, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, AND FOR THE COUNTY OF CANYON
PRESIDING: **BRADLY S. FORD** DATE: FEBRUARY 22, 2010

THE STATE OF IDAHO,)	COURT MINUTE
)	
Plaintiff,)	CASE NO. CR-2009-24815-C
)	
vs)	TIME: 1:00 P.M.
)	
JAVIER AGUILAR,)	REPORTED BY: Yvonne Hyde Gier
)	
Defendant.)	DCRT 5 (220-233)
)	

This having been the time heretofore set for **status conference** in the above entitled matter, the State was represented by Mr. Bryan Taylor and Ms. Erica Kallin, Deputy Prosecuting Attorneys for Canyon County, and the defendant was present in court with counsel, Mr. Ryan Holdaway for Mr. Dennis Charney.

In answer to the Court's inquiry, all parties indicated they were prepared to proceed to trial.

The Court indicated it would summarize its ruling on motions previously argued, with a more detailed ruling the following day prior to commencement of the trial.

The Court denied the State's 404b Motion in Limine, but indicated if the door was opened, the evidence might be allowed.

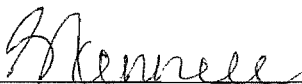
The Court granted the State's 412 Motion in Limine.

The Court reserved the right to change its ruling in regard to both motions after hearing the evidence in the trial.

Ms. Kallin moved to amend the Indictment to accurately reflect dates and ages. Mr. Holdaway had no objection, and the Court so amended.

The **jury trial set to commence the 23rd day of February 2010 at 9:00 a.m.**, was noted for the record.

The defendant was released on the bond previously posted and instructed to remain in contact with his attorney.



Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **BRADLY S. FORD** DATE: FEBRUARY 23, 2010

THE STATE OF IDAHO,	)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR-2009-24815-C
)	
vs.	)	TIME: 9:00 A.M.
)	
	)	REPORTED BY: Yvonne Hyde Gier
JAVIER AGUILAR,)	
)	
Defendant.	)	DCRT 5 (813-847)(1020-1107)
	)	(1110-1117)(1119-1122)(1136-1113)
	)	(133-144)(246-434)(435-440)

This having been the time heretofore set for **trial to a jury** in the above entitled matter, the State was represented by counsel, Mr. Bryan Taylor and Ms. Erica Kallin, Deputy Prosecuting Attorneys for Canyon County, and the defendant was present in court with counsel, Mr. Dennis Charney.

The Court convened at 8:13 a.m., with counsel and the defendant present.

In answer to the Court's inquiry, there was no objection to the proposed opening instructions.

Mr. Charney moved to exclude witnesses; the Court so Ordered.

Ms. Kallin noted Detective Bryce King would be the State's Investigator, also called as a witness, therefore would be present in the courtroom throughout the trial.

Mr. Charney noted the State was entitled to do so, per the law.

Ms. Kallin further noted parents of the victims (also called as witnesses) would be present in the courtroom throughout the trial. Mr. Charney had no objection.

The Court and counsel discussed procedural issues of the trial.

The Court reiterated it's ruling which granted the State's Motion in Limine to prevent testimony of previous allegations of abuse. Mr. Charney and Ms. Kallin made statements for the record. The Court indicated if the door was opened, it would re-visit the motion outside the presence of the jury. The Court additionally noted it's denial of the State's 404b Motion in Limine

Ms. Kallin noted State's exhibits 1, 2, 3, and 4 (previously marked) and identified as photos would be stipulated into evidence.

Mr. Charney concurred.

The parties stipulated to maximum forty-five (45) minutes (each) voir dire, and maximum twenty (20) minutes (each) opening statements.

The Court recessed at 8:47 a.m.

The Court reconvened at 10:20 a.m., with all parties and the prospective jury panel present.

The Court instructed the clerk to call the roll of the jury at 10:24 a.m.

The Court advised the jury of the charge that was involved in this case, the process involved in picking a jury, and introduced the parties.

The prospective jury panel was sworn voir dire by the clerk.

The clerk drew thirty-five (35) juror numbers, one at a time, and the following

Prospective jurors were seated:

#20	#187	#88	#44	#27
#151	#130	#172	#639	#634
#61	#641	#166	#161	#17
#185	#645	#637	#650	#179
#76	#74	#22	#33	#47
#638	#90	#36	#49	#177
#132	#60	#138	#52	#35

The Court questioned the prospective jurors' voir dire.

The Court went off record for a sidebar at 11:07 a.m.

The Court resumed recording at 11:10 a.m.

The Court noted the parties had stipulated to excuse certain jurors for cause.

Juror #171 was excused for cause.

Juror #36 was excused for cause and juror #115 was called and examined by the Court.

Juror #115 was excused for cause and juror #152 was called and examined by the Court.

Juror #187 was excused for cause and juror #640 was called and examined by the Court.

The Court went off record for a sidebar at 11:17 a.m.

The Court resumed recording at 11:19 a.m.

The Court admonished the jury as to their conduct and excused them at 11:22 a.m.

The Court reconvened at 11:36 a.m., with all parties and the prospective jury

panel present. All parties waived roll call.

The parties stipulated to excuse juror #172 for cause, and juror #18 was called and examined by the Court.

The Court went off record for a sidebar at 11:37 a.m.

The Court resumed recording at 11:38 a.m.

The parties stipulated to excuse juror #18 for cause, and juror #5 was called and examined by the Court.

The Court advised the prospective panel that the attorney would question the initial thirty-five (35) jurors only at this time

Ms. Kallin examined the prospective jury as a whole and individually. Ms. Kallin moved to excuse juror #185. The Court excused juror #185 for cause, and juror #646 was called and examined.

Ms. Kallin continued voir dire.

Mr. Charney examined the prospective jury as a whole and individually.

In answer to the Courts inquiry, each of counsel indicated they passed the panel for cause.

The Court instructed each of counsel to complete their peremptory challenges, and went off record at 1:13 p.m.

The Court resumed recording at 1:33 p.m.

The Court instructed those prospective jurors chosen to try this matter to take the appropriate seat in the jury box. The Court further excused the remaining jurors instructing

them to report to the Jury Commissioner before leaving.

The following jurors were called and seated at 1:34 p.m.

#88	#5	#152	#646	#76
#650	#132	#640	#33	#641
#52	#74	#27		

The jurors were sworn by the clerk to well and truly try the matter at issue at 1:37 p.m.

The admonished the jury as to their conduct and excused them at 1:42 p.m.

The Court reconvened at 2:46 p.m., outside the presence of the jury.

In answer to the Court's inquiry, there were no objections to proposed opening instructions.

Mr. Charney objected to Mydell Yeager as being qualified as an expert specifically by the Supreme Court.

Ms. Kallin indicated the State would qualify Ms. Yeager as an expert, with no reference to any specific court. Ms. Charney had no objection.

In answer to the Court's inquiry, neither party objected to the redacted version of the Indictment which the clerk would read to the jury and into the record.

The jury was returned to the courtroom at 2:52 p.m., by the Bailiff and properly seated. All parties waived roll call.

The Court read opening instructions to the jury.

Upon direction of the Court, the clerk read the charging Indictment to the jury.

Mr. Taylor presented the State's opening statements.

Mr. Charney presents the defendant's opening statements.

Mydell Yeager was called as the State's first witness, sworn by the clerk, direct examined (Ms. Kallin), cross examined, and redirect examined (Ms. Kallin).

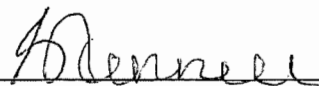
The Court went off record for a sidebar at 4:34 p.m.

The Court resumed recording at 4:35 p.m.

The Court admonished the jury as to their conduct and excused them at 4:38 p.m.

In answer to the Court's inquiry, counsel had nothing to take up outside the presence of the jury.

The Court adjourned at 4:40 p.m.


Deputy Clerk

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FEB 23 2010

CANYON COUNTY CLERK
S FENNELL, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,
Plaintiff,

-VS-

JAVIER AGUILAR,
Defendant.

CASE NO. CR-2009-24815-C

JURY INSTRUCTIONS

000091

ORIGINAL

INSTRUCTION NO. 101

Now that you have been sworn as jurors to try this case, I want to go over with you what will be happening. I will describe how the trial will be conducted and what we will be doing. At the end of the trial, I will give you more detailed guidance on how you are to reach your decision.

Because the state has the burden of proof, it goes first. After the state's opening statement, the defense may make an opening statement, or may wait until the state has presented its case.

The state will offer evidence that it says will support the charge against the defendant. The defense may then present evidence, but is not required to do so. If the defense does present evidence, the state may then present rebuttal evidence. This is evidence offered to answer the defense's evidence.

After you have heard all the evidence, I will give you additional instructions on the law. After you have heard the instructions, the state and the defense will each be given time for closing arguments. In their closing arguments, they will summarize the evidence to help you understand how it relates to the law. Just as the opening statements are not evidence, neither are the closing arguments. After the closing arguments, you will leave the courtroom together to make your decision. During your deliberations, you will have with you my instructions, the exhibits admitted into evidence and any notes taken by you in court.

INSTRUCTION NO. 102

This criminal case has been brought by the state of Idaho. I will sometimes refer to the state as the prosecution.

The defendant is charged by the state of Idaho with violations of the law. The charges against the defendant are contained in the Indictment. The clerk has read it to you. To the charges, the defendant has entered his plea of "Not Guilty." The plea of "Not Guilty" puts at issue every material allegation of the charges against the defendant.

The Indictment is simply a formal method of accusing a defendant; it is not evidence for any purpose.

INSTRUCTION NO. 103

A defendant in a criminal action is presumed to be innocent. This presumption places upon the state the burden of proving the defendant guilty beyond a reasonable doubt. Thus, a defendant, although accused, begins the trial with a clean slate with no evidence against the defendant. If, after considering all the evidence and my instructions on the law, you have a reasonable doubt as to the defendant's guilt, you must return a verdict of not guilty.

Reasonable doubt is defined as follows: It is not mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is the state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

INSTRUCTION NO. 104

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may be made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I am being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustain an objection to a question or to an exhibit, the witness may not answer the question or the exhibit may not be considered. Do not attempt to guess what the answer might have been or what

the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should put it out of your mind, and not refer to it or rely on it in your later deliberations.

During the trial I may have to talk with the parties about the rules of law which should apply in this case. Sometimes we will talk here at the bench. At other times I will excuse you from the courtroom so that you can be comfortable while we work out any problems. You are not to speculate about any such discussions. They are necessary from time to time and help the trial run more smoothly.

Some of you have probably heard the terms "circumstantial evidence," "direct evidence" and "hearsay evidence." Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

INSTRUCTION NO. 105

If during the trial I may say or do anything, which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.

INSTRUCTION NO. 106

Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. If you find the defendant guilty, it will be my duty to determine the appropriate penalty or punishment.

INSTRUCTION NO. 107

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. You should not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, please leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. In addition, you cannot assign to one person the duty of taking notes for all of you.

INSTRUCTION NO. 108

It is important that as jurors and officers of this court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

First, do not talk about this case either among yourselves or with anyone else during the course of the trial. You should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all the evidence, after you have heard my final instruction and after the final arguments. You may discuss this case with the other members of the jury only after it is submitted to you for your decision. All such discussion should take place in the jury room.

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, report that to the bailiff as soon as you are able to do so. You should not tell any of your fellow jurors about what has happened.

Third, during this trial do not talk with any of the parties, their lawyers or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial do not make any investigation of this case or inquiry outside of the courtroom on your own. Do not go any place mentioned in the testimony without an explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias, the internet or any other source of information unless I specifically authorize you to do so.

Fifth, do not read about the case in the newspapers. Do not listen to radio or television broadcasts about the trial. You must base your verdict solely on what is presented in court and not upon any newspaper, radio, television or other account of what may have happened.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **BRADLY S. FORD** DATE: FEBRUARY 24, 2010

THE STATE OF IDAHO,)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR-2009-24815-C
)	
vs.	)	TIME: 9:00 A.M.
)	
	)	REPORTED BY: Yvonne Hyde Gier
JAVIER AGUILAR,)	
	)	DCRT 5 (910-911)(912-1018)
Defendant.	)	(1020-1023)(1037-1119)(1121-1147) (1147-1149)
	)	(100-209)(210-212)(234-237)(238-330)(351-404)

This having been the time heretofore set for the **2nd day trial to a jury** in the above-entitled matter, the State was represented by counsel, Mr. Bryan Taylor and Ms. Erica Kallin, Deputy Prosecuting Attorneys for Canyon County, and the defendant was present in court with counsel, Mr. Dennis Charney.

The Court convened at 9:10 a.m., with counsel and the defendant present. In answer to the Court's inquiry, all parties indicated they were prepared to proceed.

The Court recessed at 9:11 a.m.

The Court reconvened at 9:12 a.m., with all parties and the jury panel present. The jury panel was properly seated and under the supervision of the Bailiff.

All counsel waived roll call of the jury.

Michael Sexton was called as the State's first witness, sworn by the clerk, direct

examined (Ms. Kallin), cross examined, redirect examined (Ms. Kallin), and re-cross examined.

Bryce King was called as the State's second witness, sworn by the clerk, direct examined (Ms. Kallin), and cross examined.

State's exhibit 1 (photo of house) previously stipulated into evidence was published to the jury at Ms. Kallin's request.

State's exhibit 5 was marked by the clerk, via the Bailiff and identified by the witness as a diagram.

The parties stipulated to admit State's exhibit 5 into evidence.

The witness was continued cross examined.

The Court went off record for a sidebar at 10:18 a.m.

The Court resumed recording at 10:20 a.m.

The witness was continued cross examined.

The Court admonished the jury as to their conduct and recessed at 10:23 a.m.

The Court reconvened at 10:37 a.m., outside the presence of the jury.

Ms. Kallin noted Mr. Charney opened the door in regard to defendant invoking his right to remain silent. Therefore, Ms. Kallin requested the State be allowed to question further.

Mr. Charney objected and presented argument.

The Court denied the State's request.

The jury was returned to the courtroom by the Bailiff at 10:46 a.m., and properly

seated.

All counsel waived roll call of the jury.

The witness was redirect examined (Ms. Kallin), and re-cross examined.

Jamey Brewer was called as the State's third witness, sworn by the clerk, and direct examined (Mr. Taylor).

State's exhibit 2 (photo), previously stipulated into evidence, was published to the jury upon Mr. Taylor's request.

The witness was continued direct examined (Mr. Taylor).

The Court went off record for a sidebar at 11:19 a.m.

The jury was excused at 11:21 a.m.

Mr. Charney made an offer of proof in regard to a photograph not previously disclosed.

Mr. Taylor objected and presented argument.

The Court would allow the photo for limited purposes, unless further offer of proof made.

The jury was returned to the courtroom at 11:30 a.m., by the Bailiff and properly seated.

All counsel waived roll call.

The witness was cross examined.

Defendant's exhibit A, previously marked was identified by the witness as a photo.

000105

The witness was continued cross examined.

The Court went off record at 11:47 a.m., for a sidebar.

The Court resumed recording at 11:47 a.m.

The Court admonished the jury as to their conduct and recessed at 11:49 a.m.

The Court reconvened at 1:00 p.m., outside the presence of the jury.

In answer to the Court's inquiry, there was nothing to take up prior to the jury returning.

The jury was returned to the courtroom at 1:03 p.m., and properly seated.

Cody Barnes was called as the State's fourth witness, sworn by the clerk and direct examined (Mr. Taylor).

State's exhibit 3 (photo), previously stipulated into evidence was published to the jury upon Mr. Taylor's request.

The witness was continued direct examined (Mr. Taylor), and re-cross examined.

Jonathan Aguirre was called as the State's fifth witness, sworn by the clerk, and direct examined (Mr. Taylor).

State's exhibit 4 (photo) previously stipulated into evidence was published to the jury upon the Mr. Taylor's request.

The witness was continued direct examined (Mr. Taylor), and cross examined.

The Court went off record at 2:09 p.m., for a sidebar.

The Court resumed recording at 2:10 p.m.

The Court admonished the jury as to their conduct and recessed at 2:12 p.m.

The Court reconvened at 2:34 p.m., outside the presence of the jury.

Ms. Kallin moved to amend count II of the Indictment via interlineation to reflect January 2000. Mr. Charney had no objection; the Court so amended.

In answer to the Court's inquiry, each of counsel indicated the amended could be addressed with the jury in the elements portion of closing instructions.

The Court went off record at 2:37 p.m., for a sidebar.

The Court resumed recording at 2:38 p.m.

The jury was returned to the courtroom by the Bailiff at 2:39 p.m., and properly seated.

All counsel waived roll call of the jury.

Ms. Kallin advised the Court that the State rests.

Jacob Garcia was called as the defendant's first witness, sworn by the clerk, direct examined, and cross-examined (Ms. Kallin).

Edgar Aguilar was called as the defendant's second witness, sworn by the clerk, and direct examined.

The jury was excused at 2:54 p.m.

The Court and counsel discussed an objection.

The jury was returned to the courtroom at 3:00 p.m., by the Bailiff and properly seated.

All counsel waived roll call of the jury.

The witness was continued direct examined and cross examined (Ms. Kallin).

000107

Jose Aguilar was called as the defendant's third witness, sworn by the clerk, direct examined, and cross-examined (Mr. Taylor).

Bryce King was called as the defendant's fourth witness, and reminded by the Court that he was still under oath.

The witness was direct examined, and cross examined (Ms. Kallin).

The Court admonished the jury as to their conduct and recessed at 3:30 p.m.

The Court reconvened at 3:51 p.m., outside the presence of the jury.

The Court determined there was nothing to take up prior to the jury returning.

The jury was returned to the courtroom at 3:53 p.m., by the Bailiff and properly seated.

All counsel waived roll call of the jury.

Rosa Maria De La Fuente was called as the defendant's fifth witness, sworn by the clerk, and direct examined.

The Court admonished the jury as to their conduct and excused them at 4:02 p.m.

The Court noted it would meet with counsel in chambers to discuss closing instructions.

The Court recessed at 4:04 p.m.


Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **BRADLY S. FORD** DATE: FEBRUARY 25, 2010

THE STATE OF IDAHO,)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR-2009-24815-C
)	
vs.	)	TIME: 9:00 A.M.
)	
	)	REPORTED BY: Yvonne Hyde Gier
JAVIER AGUILAR,)	
)	
Defendant.	)	DCRT 5 (908-1015)(1040-1110)
	)	(1154-1210)(1238-101)(107-212)
	)	(526-530)(542-550)

This having been the time heretofore set for **3rd day trial to a jury** in the above-entitled matter, the State was represented by counsel, Mr. Bryan Taylor and Ms. Erica Kallin, Deputy Prosecuting Attorneys for Canyon County and the defendant was present in court with counsel, Mr. Dennis Charney.

The Court convened at 9:08 a.m., with counsel and the defendant present.

The Court noted the parties stipulated to the defendant being circumcised.

The jury was returned to the courtroom at 9:11 a.m., by the Bailiff and properly seated.

All counsel waived roll call of the jury.

The Court advised the jury that the parties stipulated to the fact that the defendant is circumcised. Further, the jury may consider this as evidence.

Javier Aguilar was called as the defendant's first witness, sworn by the clerk, direct examined, and cross-examined (Mr. Taylor).

Andrew Bradburn was called as the defendant's second witness, sworn by the clerk, direct examined, and cross examined (Ms. Kallin).

Rene Gonzalez was called as the defendant's third witness, sworn by the clerk, direct examined, and cross examined (Ms. Kallin).

Angelica Aguilar was called as the defendant's fourth witness, sworn by the clerk, direct examined, and cross examined (Mr. Taylor).

Mr. Charney advised the Court that the defendant rests.

The Court admonished the jury as to their conduct and recessed at 10:15 a.m.

The Court reconvened at 10:40 a.m., outside the presence of the jury.

Ms. Kallin advised the Court that the State would call two (2) rebuttal witnesses.

Mr. Charney requested an offer of proof on State's second rebuttal witness, Alisa Ortega.

Ms. Kallin presented an offer of proof in regard to Alisa Ortega.

Mr. Charney requested time to think on the issue.

The parties agreed to argue the issues of Ms. Ortega's testimony upon completion of the State's first rebuttal witness.

The jury was returned to the courtroom by the Bailiff at 10:44 a.m., and properly seated.

Taleetha Fuentes was called as the State's first rebuttal witness, sworn by the

clerk, direct examined (Ms. Kallin), and cross examined.

The Court admonished the jury as to their conduct and excused them at 10:51 a.m.

Mr. Charney stated Alisa Ortega was not a proper rebuttal witness, and presented argument to the same.

Ms. Kallin presented argument in support.

Ms. Charney presented further argument.

The Court indicated it would allow the witness, but upon Mr. Charney's request, would have her initially testify outside the presence of the jury.

The jury was returned to the courtroom by the Bailiff at 11:07 a.m., and properly seated.

The Court admonished the jury as to their conduct and recessed at 11:10 a.m.

The Court reconvened outside the presence of the jury at 11:54 a.m.

The Court and counsel discussed proposed closing instructions and verdict form.

Ms. Kallin indicated the State had no objection to proposed closing instructions, or the verdict form. Further, the State had no additional instructions they wished to add.

Mr. Charney indicated the defendant had no objection to closing instructions. Mr. Charney listed additional instructions for lesser included charges, and presented argument in support.

Ms. Kallin presented argument against lesser included charges.

The Court denied Mr. Charney's request for lesser included charges.

Mr. Charney indicated the defendant had no objection to the proposed closing instructions, and verdict form (other than previously stated for the record).

The Court noted the amendment of the year in the elements portion of the instructions. All parties concurred.

The parties stipulated to have Bobbi Aguilar out of the courtroom during Alisa Ortega's testimony.

Mr. Charney indicated the offer of proof for rebuttal witness Alisa Ortega, outside the presence of the jury, was not needed.

The Court reconvened at 12:10 p.m., outside the presence of the jury.

In answer to the Court's inquiry, all parties indicated they were prepared to proceed.

The jury was returned to the courtroom by the Bailiff at 12:39 p.m., and properly seated. All parties waived roll call.

Alisa Ortega was called as the State's second rebuttal witness, direct examined (Ms. Kallin) and cross examined.

Ms. Kallin and Mr. Taylor indicated the State rested.

Bobbi Aguilar was called as the defendant's first rebuttal witness, sworn by the clerk, direct examined and cross examined (Mr. Taylor).

Mr. Charney indicated the defendant rested.

The Court admonished the jury as to their conduct at 12:59 p.m., and excused

them.

In answer to the Court's inquiry, there were no further issues to take up in regard to closing instructions.

The Court recessed at 1:01 p.m.

The Court reconvened at 1:07 p.m., with all parties and the jury panel present.

All parties waived roll call of the jury.

The Court read closing instructions to the jury.

Ms. Kallin presented the State's closing argument.

Mr. Charney presented the defendant's closing argument.

Ms. Kallin presented the State's final argument.

Upon direction of the Court, juror #5 was randomly drawn by the clerk as the alternate juror.

The clerk administered The Oath to the Bailiff at 2:10 p.m., and the jury retired to deliberate its verdict.

The Court recessed at 2:12 p.m.

The Court reconvened at 5:26 p.m., outside the presence of the jury.

The Court noted for the record it received a written question from the jury, that stated: "Can we get the Court transcript of Jaimie's testimony and of Javier's testimony. Juror #640."

The Court further noted the parties had stipulated to a written answer that stated:

"The Court can cause a recording of the requested testimony to be replayed to the jury in the courtroom. We would not be able to accommodate that request until

tomorrow morning. I am also required by law to ask you if you wish to continue deliberating past 5:00 p.m.

I need you to answer to following questions:

1. Do you wish to come back in the morning at which time a copy of the recorded testimony will be played to you in the courtroom?
2. Do you wish to continue deliberating this evening without the benefit of listening to the recording?
3. Do you wish to continue deliberating this evening with the understanding that you may request to come back in the morning to listen to a recording of the requested testimony if you are unable to reach a decision.

Dated this 25th day of February 2010
Bradly S. Ford – District Judge “

All parties indicated that was their stipulated answer to the jury question.

The Court recessed at 5:30 p.m.

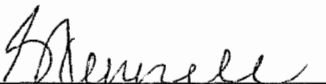
The Court reconvened outside the presence of the jury at 5:26 p.m.

The Court read the jury answer into the record. “We would like to hearing recording in the morning, and go home for the evening right now. Juror #640.”

All parties stipulated that the court reporter need not re-transcribe the testimony of Jamey and Javier when played for the jury.

The jury was returned to the courtroom by the Bailiff at 5:48 p.m., and properly seated. All parties waived roll call of the jury.

The Court admonished the jury as to their conduct and adjourned at 5:50 p.m.


Deputy Clerk

The parties stipulate that ~~the~~ Defendant,
Javier Aguilar, is uncircumsised.

Eucan Muller
Br

FILED
A.M. P.M.

FEB 25 2010

CANYON COUNTY CLERK
S FENNELL, DEPUTY

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A.M. P.M.

FEB 25 2010

CANYON COUNTY CLERK
S FENNELL, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

-VS-

JAVIER AGUILAR,

Defendant.

CASE NO. CR-2009-24815-C

JURY INSTRUCTIONS

000116

ORIGINAL

INSTRUCTION NO. 201

You have now heard all the evidence in the case. My duty is to instruct you as to the law.

You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is my instruction that you must follow.

INSTRUCTION NO. 203

As members of the jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence; and
3. any facts to which the parties have stipulated.

Certain things you have heard or seen are not evidence, including:

1. arguments and statements by lawyers. The lawyers are not witnesses.

What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;

2. testimony that has been excluded or stricken, or which you have been instructed to disregard;
3. anything you may have seen or heard when the court was not in session.

INSTRUCTION NO. 204

During these proceedings you have heard the full name of the alleged victims, however, in these instructions only the initials J.B., C.B., and J.A. are used.

INSTRUCTION NO. 205

In this case, the defendant is charged with three counts of Lewd Conduct with a Minor Under Sixteen. Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law that applies to it, uninfluenced by your decision as to any other count. The defendant may be found guilty or not guilty on any or all of the offenses charged.

INSTRUCTION NO. 206

In order for the defendant to be guilty of Lewd Conduct with a Minor Under Sixteen as charged in Count I, the state must prove each of the following:

1. On or between January 2002 through July 15, 2009
2. in the state of Idaho
3. the defendant, Javier Aguilar, committed an act of genital-buttocks contact, and/or manual-genital contact, and/or oral-genital contact upon or with the body of J.B. (DOB [REDACTED])
4. J.B. was a child under sixteen (16) years of age, and
5. the defendant committed such act with the specific intent to arouse, appeal to, or gratify the lust or passions or sexual desires of the defendant, of such child, or of some other person.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

INSTRUCTION NO. 207

In order for the defendant to be guilty of Lewd Conduct with a Minor Under Sixteen as charged in Count II, the state must prove each of the following:

1. On or between January 2000 through July 15, 2009
2. in the state of Idaho
3. the defendant, Javier Aguilar, committed an act of genital-buttocks contact, and/or manual-genital contact upon or with the body of C. B. (DOB [REDACTED])
4. C. B. was a child under sixteen (16) years of age, and
5. the defendant committed such act with the specific intent to arouse, appeal to, or gratify the lust or passions or sexual desires of the defendant, of such child, or of some other person.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

INSTRUCTION NO. 208

In order for the defendant to be guilty of Lewd Conduct with a Minor Under Sixteen as charged in Count III, the state must prove each of the following:

1. On or between January 2002 through July 15, 2009
2. in the state of Idaho
3. the defendant, Javier Aguilar, committed an act of genital-buttocks contact, and/or manual-genital contact, and/or oral-genital contact upon or with the body of J.A. (DOB [REDACTED])
4. J.A. was a child under sixteen (16) years of age, and
5. the defendant committed such act with the specific intent to arouse, appeal to, or gratify the lust or passions or sexual desires of the defendant, of such child, or of some other person.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

INSTRUCTION NO. 209.

To constitute lewd and lascivious conduct, it is not necessary that bare skin be touched. The touching may be through the clothing.

INSTRUCTION NO. 210

The law does not require as an essential element of the crime that the lust, passions, or sexual desires of either the defendant or the alleged victims be actually aroused, appealed to, or gratified.

INSTRUCTION NO. 211

You are instructed that it is not a defense to the crime of Lewd Conduct with a Minor Under Sixteen that the alleged victims may have consented to the alleged conduct.

INSTRUCTION NO. 212

The State's evidence on the charge of Lewd Conduct With a Minor Under Sixteen, if believed, includes more than one act or incident that could constitute the charged crime. In order to find the defendant guilty, the jury must unanimously agree which act or incident constituted the lewd conduct.

INSTRUCTION NO. 213

It is alleged that the crime charged was committed "on or about" a certain date. If you find the crime was committed, the proof need not show that it was committed on that precise date.

INSTRUCTION NO. 214

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have a right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during the trial and the law as given you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

INSTRUCTION NO. 215

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions apply will depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

INSTRUCTION NO. 216

The original instructions and the exhibits will be with you in the jury room. They are part of the official court record. For this reason please do not alter them or mark on them in any way.

The instructions are numbered for convenience in referring to specific instructions. There may or may not be a gap in the numbering of the instructions. If there is, you should not concern yourselves about such gap.

INSTRUCTION NO. 217

Upon retiring to the jury room, select one of you as a presiding juror, who will preside over your deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

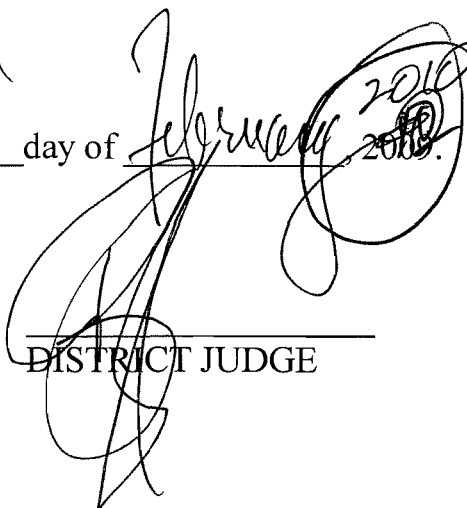
In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding juror will sign it and you will return it into open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

DATED This 25th day of February 2010.



DISTRICT JUDGE

CAN WE GET THE COURT TRANSCRIPT
OF JAIMIE'S TESTIMONY AND OF
JAVIER'S TESTIMONY?

Signed 640

F I L E D
A.M. P.M.

FEB 25 2010

CANYON COUNTY CLERK
S FENNELL, DEPUTY



000134

The court can cause a recording of the requested testimony to be replayed to the jury in the courtroom. We would not be able to accommodate that request until tomorrow morning.

I am also required by law to ask you if you wish to continue deliberating past 5:00 p.m.

I need you to answer the following questions.

1. Do you wish to come back in the morning at which time a copy of the recorded testimony will be played to you in the courtroom? *yes*

or

2. Do you wish to continue deliberating this evening without the benefit of listening to the recording? *NO*

or

3. Do you wish to continue deliberating this evening with the understanding that you may request to come back in the morning to listen to a recording of the requested testimony if you are unable to reach a decision?

NO

We would

Like to hear recording

IN THE morning and go

Home for THE Evening right now

Jaron 6/0

2/25/10

[Signature]

District Judge

000135

Court's
Exhibit
2

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **BRADLY S. FORD** DATE: FEBRUARY 26, 2010

THE STATE OF IDAHO,	)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR-2009-24815-C
)	
vs.	)	TIME: 9:00 A.M.
)	
JAVIER AGUILAR,	)	REPORTED BY: Yvonne Hyde Gier
)	
Defendant.	)	DCRT 5 (952-1003)(1013-1149)
	)	(137-153)

This having been the time heretofore set for **4th day trial to a jury** in the above-entitled matter, the State was represented by counsel, Mr. Bryan Taylor and Ms. Erica Kallin, Deputy Prosecuting Attorneys for Canyon County and the defendant was present in court with counsel, Mr. Dennis Charney.

The Court convened at 9:52 a.m., outside the presence of the jury.

The Court noted the previous evening the jury requested to hear the testimony of the alleged victim, Jamey Brewer and the defendant Javier Aguilar again. The Court indicated CD's of said testimony were made, and would be played for the jury in the courtroom. The CD containing Jamey Brewer's testimony would be labeled Court's exhibit 3, and the CD containing Javier Aguilar's testimony would be labeled Court's exhibit 4. The Court stated the jury would be advised each CD would be played

straight through, no start, stop, or re-plays.

The parties stipulated to be absent as well as have the courtroom locked during the playing of the testimony, as to not distract / intimidate the jury. The only parties to be present in the courtroom would be the jury and court personnel.

The parties further stipulated that the court reporter need not transcribe the testimony again, and it would be recorded.

All parties indicated that was their understanding and stipulation.

Court's exhibits 3 and 4 were admitted into evidence.

The Court recessed at 10:03 a.m.

The Court reconvened at 10:13 a.m., with the jury and court personnel present.

Upon direction of the Court, the clerk called roll of the jury. All jurors were present, and properly seated with the exception of #5, the alternate.

The Court advised the jury it would play the testimony of requested witnesses straight through, no stops, starts, or re-plays.

The Court played the previously requested testimony of Jamey Brewer and Javier Aguilar for the jury.

The Court excused the jury to continue their deliberation at 11:49 a.m., and recessed.

The Court reconvened at 1:37 p.m., outside the presence of the jury.

The Court noted it received word the jury had reached a verdict over thirty (30) minutes prior. The Court further noted, all counsel were present, the defendant was

not present.

In answer to the Court's inquiry, Mr. Charney had nothing further to add.

The Court indicated the defendant had been seen in the courthouse parking lot, but was not present in the courtroom.

The Court determined the jury had waited long enough, and the verdict would be taken in absentia of the defendant.

The jury was returned to the courtroom by the Bailiff at 1:40 p.m., and properly seated. All parties waived roll call.

The Court determined the jury had reached a verdict, which was delivered and read by the clerk as follows:

We, the jury, duly impaneled and sworn to try the above-entitled action, for our verdict, unanimously answer the question submitted to us as follows:

QUESTION NO. 1. Is the defendant, Javier Aguilar, not guilty or guilty of Lewd Conduct with a Minor under Sixteen as charged in Count I, to wit: J.B. (DOB: [REDACTED])? [REDACTED])?

ANSWER: **Guilty.**

QUESTION NO 2. Is the defendant, Javier Aguilar, not guilty or guilty of Lewd Conduct with a Minor under Sixteen as charged in Count II, to wit: C.B. (DOB: [REDACTED])? [REDACTED])?

ANSWER: **Guilty**

QUESTION NO 3. Is the defendant, Javier Aguilar, not guilty or guilty of Lewd

Conduct with a Minor under Sixteen as charged in Count III, to wit: J.A. (DOB: [REDACTED])? [REDACTED])?

ANSWER: **Guilty**

The Court noted half-way through the clerk reading the verdict into the record, the defendant entered the courtroom, and was seated with his counsel.

In answer to the Court's inquiry, counsel indicated they did not wish to have the jurors polled.

The Court thanked the jurors for their service and excused them at 1:46 p.m.

The Court advised the defendant it would revoke the previously posted bond. Further, the defendant would be held without bond until the time of sentencing.

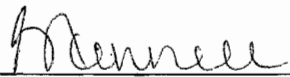
Mr. Charney presented argument regarding bond revocation on behalf of the defendant.

The Court Ordered the defendant to obtain a **Psycho-sexual evaluation** and **Presentence Investigation Report**. The Court further set this matter for **sentencing the 11th day of May 2010 at 9:30 a.m.**

Neither counsel felt evaluations pursuant to I.C. §19-2524 were needed in this matter.

The defendant was remanded to the custody of the Canyon County Sheriff pending further proceedings.

The Court adjourned at 1:53 p.m.


Deputy Clerk

FEB 26 2010

CANYON COUNTY CLERK
S FENNELL, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO)	
)	
Plaintiff,)	
	)	CR-2009-24815-C
)	
-VS-)	
	)	VERDICT FORM
JAVIER AGUILAR,)	
)	
Defendant.)	
)	

We, the Jury, duly impaneled and sworn to try the above-entitled action, for our verdict, unanimously answer the question submitted to us as follows:

QUESTION NO. 1: Is defendant Javier Aguilar not guilty or guilty of Lewd Conduct with a Minor Under Sixteen as charged in Count I, to wit: J.B. [REDACTED] [REDACTED]?)?

Not Guilty _____

Guilty ✓

QUESTION NO. 2: Is defendant Javier Aguilar not guilty or guilty of Lewd Conduct with a Minor Under Sixteen as charged in Count II, to wit: C. B. (DOB [REDACTED])?

Not Guilty _____

Guilty ✓

QUESTION NO. 3: Is defendant Javier Aguilar not guilty or guilty of Lewd Conduct with a Minor Under Sixteen as charged in Count III, to wit: J.A. (DOB [REDACTED])?

Not Guilty _____

Guilty ✓

You are done. The presiding juror must sign the verdict form and inform the bailiff that you have completed your deliberations.

Dated this 26 day of February, 2010.

(640) David L. Lefter

Presiding Juror

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 02/25/10 AT 153p.M.
CLERK OF THE DISTRICT COURT
BY Donnell, Deputy

THE STATE OF IDAHO, or

Plaintiff,

-vs-

Javier Aguilar
Defendant.

Case No. CR09-24815C

COMMITMENT ON BOND

IT IS HEREBY ORDERED that the above-named Defendant be committed to the custody of the Sheriff of Canyon County, Idaho:

- ☒ ~~Bond having been set in the sum of \$~~ Hold without bond
- ☐ Bond having been ☐ increased ☐ reduced to the sum of \$ _____
- ☐ Defendant shall report to the Pre-Trial Release Office if bond is posted.
- ☐ Defendant shall have no contact with victim whether or not bond is posted.
- ☐ Defendant shall not operate or be in the front seat of any motor vehicle if bond is posted.

☒ Other: Prior bond revoked

Sent: 05/11/10 @ 9:30am for p

Dated: 02/25/10

Signed: 
Judge

☒ Jail

☐ Dispatch

COMMITMENT ON BOND

10/98

000142

Third Judicial District Court, State of Idaho
In and For the County of Canyon
NOTICE OF ORDER FOR PRESENTENCE REPORT

RESET (Clerk, check if applicable)
Assigned to: _____

FILED: 02/26/10 150p M.
By: McNeele, Deputy.

Assigned: _____ Due Date: _____

STATE OF IDAHO
Plaintiff,

vs.

Javier Aguilar
Defendant

Case No: CR09-24815C
CHARGE(s): Good Conduct with a
Minor Under 16 yoa (3 counts)

On this 23 day of February, 2010, a Pre-sentence Investigation Report was
ordered by the Honorable Bradly D. Ford to be completed for Court appearance on
11 May 2010 @ 9:30 am 20 .

EVALUATIONS TO BE DONE: Copy of each evaluation to be sent to Presentence Investigation Office to be included with PSI
Under IC 19-2524 assessment(s) is(are) ordered which shall include a criminogenic risk assessment of the defendant
pursuant to (IC 19-2524(4)):

- ☐ Mental Health Examination as defined in IC 19-2524(3), including any plan for treatment (PSMH1 ROA code); and/or
☐ Substance Abuse Assessment as defined in IC 19-2524(2) including any plan for treatment (PSSA1 ROA code)

Other non-IC 19-2524 evaluations/examinations ordered for use with the PSI:

☒ Sex Offender ☐ Domestic Violence ☐ Other _____ Evaluator: S.A.N.E.
☒ No evaluations are ordered. (PSIO1 ROA code)

DEFENSE COUNSEL: Dennis Channey - 1191 East Iron Eagle Dr - Eagle, ID 83616

PROSECUTOR: Bryan Taylor, Erica Kallin

THE DEFENDANT IS IN CUSTODY: ☒ YES ☐ NO If yes, where: Canyon County Jail

DEFENDANT'S INFORMATION: PLEASE PRINT

DO YOU NEED AN INTERPRETER? ☐ YES ☒ NO

Name: _____ ☒ Male ☐ Female ☐ RACE: Caucasian ☒ Hispanic ☐ Other

Address: 5981 N. Parchment Pl. City: Boise State: ID ZIP: 83713

Telephone: 208-989-6711 Message Phone: _____ Work Phone: _____

Employer: N/A Work Address: N/A

Date of Birth: [REDACTED] Social Security Number: [REDACTED]

Name & Phone Number of nearest relative: Robbi Aguilar 989-6711

Date of Arrest: 07/15/09 Arresting Agency: NPD

Your assigned Pre-sentence Investigator will contact you to schedule an interview using the above information. Please
have your Pre-sentence Investigation Personal History Questionnaire filled out completely for interview.

Faxed P&P 454-7624

[] Defendant

TRANSMISSION VERIFICATION REPORT

TIME : 03/01/2010 08:51

DATE, TIME	03/01 08:50
FAX NO./NAME	94547624
DURATION	00:00:34
PAGE(S)	01
RESULT	OK
MODE	STANDARD
	ECM

000144

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **BRADLY S. FORD** DATE: MARCH 05, 2010

THE STATE OF IDAHO,)	COURT MINUTES
)	
Plaintiff,)	CASE NO: CR-2009-24815-C
)	
vs.)	TIME: 9:00 A.M.
)	
JAVIER AGUILAR,)	REPORTED BY: Yvonne Hyde-Gier
)	
Defendant.)	DCRT 5 (904-907)(916-922)
)	

This having been the time heretofore set for **further proceedings** in the above entitled matter, the State was represented by Mr. Bryan Taylor and Ms. Erica Kallin, Deputy Prosecuting Attorneys for Canyon County, and the defendant was present in court with counsel, Mr. Ryan Holdaway for Mr. Dennis Charney.

The Court advised the defendant he retains certain 5th and 6th amendment rights.

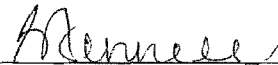
The Court provided the defendant with a form entitled Advisory and Acknowledgement of Continued Fifth Amendment Rights, and a copy of the Estrada decision.

In answer to the Court's inquiry, the defendant indicated he read, understood and signed the form entitled Advisory and Acknowledgement of Continued Fifth Amendment Rights.

Mr. Holdway advised the Court he spoke with the defendant in regard to his Estrada rights, and felt he understands.

Mr. Holdaway advised the Court he would file a request for extension of time in regard to filing briefing for a Motion for a New Trial.

The defendant was remanded to the custody of the Canyon County Sheriff pending further proceedings.



Deputy Clerk

FILED
A.M. 1:45 P.M.

MAR 05 2010

CANYON COUNTY CLERK
B RAYNE, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
)	
Plaintiff	)	ORDER FOR PSYCHO-SEXUAL
	)	ABUSE EVALUATION
)	
)	
)	
-vs-	)	Case No. CR09-24815
)	
JAVIER AGUILAR,)	
)	
Defendant.)	

This matter is set for sentencing in the above entitled matter and the Court being of the opinion that a psycho-sexual evaluation is needed before sentencing in this matter can be conducted, and

The Court hereby orders an examination and evaluation of the defendant.

NOW THEREFORE, IT IS HEREBY ORDERED that SANE SOLUTIONS, or agent of SANE SOLUTIONS, perform such evaluation on the defendant.

NOW THEREFORE, IT IS HEREBY ORDERED that SANE SOLUTIONS, or agent of SANE SOLUTIONS, shall be permitted to enter the CANYON County Adult Detention Center to conduct a psycho-sexual evaluation of the defendant.

IT IS FURTHER ORDERED that if the defendant is released on bond s/he is to immediately notify SANE SOLUTIONS. (208) 345-1170.

IT IS FURTHER ORDERED that SANE SOLUTIONS shall notify the Court in the event Defendant fails to attend this appointment.

IT IS FURTHER ORDERED that the cost of the preparation of said evaluation shall be at ☐ at County's expense ☒ at Defendant's expense ☐ provided that Defendant may be required to reimburse Third Judicial District for the cost of the evaluation, to be determined at a later time.

IT IS FURTHER ORDERED that the Canyon County Prosecutor shall provide copies of relevant collateral documentation to SANE SOLUTIONS prior to Defendant's scheduled appointment at SANE SOLUTIONS.

IT IS FURTHER ORDERED that SANE SOLUTIONS provide the Court with an original signed, written report to: HONORABLE BRADLY S. FORD, District Judge Canyon County Courthouse, 1115 Albany, Caldwell, Idaho 83605. Said report shall be delivered not later than the 4th day of May, 2010.

IT IS FURTHER ORDERED that copies of said report be sent to:

☒ Canyon County Prosecutor, 1115 Albany, Caldwell, Idaho 83606.

☐ Public Defender's Office, 510 Arthur Street, Caldwell, Idaho 83605.

☒ Probation and Parole, 612 Main, Caldwell, Idaho 83605

☐ Other: Dennis M. Charney, 1191 East Iron Eagle Drive, Eagle, Idaho 83616

IT IS FURTHER ORDERED that sentencing in this matter be set for the 11th day of May, 2010 at 9:30 a.m.

Dated this 5th day of March, 2010.



HONORABLE BRADLY S. FORD
District Judge

CERTIFICATE OF SERVICE

STATE OF IDAHO)
) ss
COUNTY OF CANYON)

I hereby certify that I served true and correct copies of the foregoing document upon the following:

John. T. Bujak
Prosecutor
Caldwell, Idaho 83605

Dennis M. Charney
Attorney at Law
1191 East Iron Eagle Drive
Eagle, Idaho 83616

SANE SOLUTIONS
5400 Franklin Road, Suite H.
Boise, Idaho 83705

Canyon County jail

either by depositing the same in the U.S. mail, first class postage prepaid, or by personal service.

Dated this 5 day of March, 2010

William H. Hurst, Clerk
Clerk of District Court



Deputy Clerk

ORDER FOR PSYCHO-SEXUAL
ABUSE EVALUATION

000149

DENNIS M. CHARNEY ISB #4610
CHARNEY AND ASSOCIATES, PLLC
1191 E. Iron Eagle Dr., Ste. #200
Eagle, ID 83616
Telephone: (208) 938-9500
Facsimile: (208) 938-9504
Email: dennischarney@gmail.com

Attorney for the Defendant

FILED
A.M. P.M.

MAR 05 2010

**CANYON COUNTY CLERK
B RAYNE, DEPUTY**

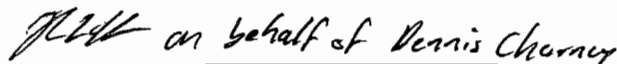
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR 09-24815C
)	
v.)	
	)	MOTION FOR EXTENSION OF TIME
JAVIER AGUILAR,)	
)	
Defendant.)	
_____)	

The Defendant, Javier Aguilar, by and through his attorney of record, Dennis M. Charney, of the firm Charney and Associates, PLLC, hereby submits to this Court this Motion for Extension of Time. Mr. Charney underwent surgery on March 2, 2010. Following surgery Mr. Charney suffered from severe internal bleeding. In the late hours of March 3, 2010 Mr. Charney underwent emergency surgery. Mr. Charney is not expected to be released from the hospital until sometime on March 5, 2010 and is expected to be in bed rest for several days in order to properly recover. The time needed for Mr. Charney to recover will make it impossible for him to draft the necessary briefing to support a Motion for a New Trial.

The motion and supporting briefing are due by March 12, 2010. Additional time is needed to allow Mr. Charney to recover and draft a briefing for this Court in support of the Defendant's Motion for a New Trial. Accordingly, the Defendant respectfully request that this Court grant an extension of time for Mr. Charney to file briefing in support of the Defendant's Motion for a New Trial

DATED this 5th day of March, 2010

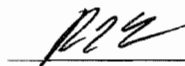

Dennis M. Charney *ISR # 4248*
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 2010, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Erica Kallin
Bryan Taylor
1115 Albany St.
Caldwell, ID 83605
Facsimile: (208) 454-7474

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ Facsimile



Ryan L. Holdaway

FILED
A.M. P.M.

MAR 08 2010

CANYON COUNTY CLERK
B RAYNE, DEPUTY

DENNIS M. CHARNEY, ISB #4610
CHARNEY AND ASSOCIATES, PLLC
1191 East Iron Eagle Drive
Eagle, Idaho 83616
Telephone: (208) 938-9500
Facsimile: (208) 938-9504

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
)	
Plaintiffs,	)	Case No. CR-2009-24815-C
)	
v.)	
	)	ORDER
JAVIER AGUILAR,)	
)	
Defendant.)	
_____)	

THIS MATTER COMES before the Court on the filing of the Stipulation To Grant Defendant's Motion For Extension of Time, the Court having reviewed said Stipulation and the court record, and the Court finding that proper grounds exist to grant the relief requested in said Stipulation;

IT IS HEREBY ORDERED as follows:


1. That the Defendant's Motion for Extension of Time to file his Motion for New Trial is granted; and

ORDER - 1

000152

2. That the defendant will file his Motion for New Trial and supporting memorandum by March 26, 2010.

DATED this 8 day of March 2010.



District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of February, 2010, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Canyon County Prosecutor
1115 Albany St
Caldwell, Id 83605
Fax: 454-7474

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

Dennis Charney
1191 E. Iron Eagle Drive #200
Eagle, ID 83616
Fax: 938-9504

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

CLERK

DENNIS M. CHARNEY, ISB #4610
CHARNEY AND ASSOCIATES, PLLC
 1191 East Iron Eagle Drive
 Eagle, Idaho 83616
 Telephone: (208) 938-9500
 Facsimile: (208) 938-9504

Attorney for Defendant

E. D. L. E. D.
 A.M. P.M.

MAR 12 2010

**CANYON COUNTY CLERK
 C ATKINSON, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
)	
Plaintiffs,	)	Case No. CR-2009-24815-C
)	
v.)	
	)	OBJECTION TO ORDER FOR
JAVIER AGUILAR,	)	PSYCHO-SEXUAL ABUSE
	)	EVALUATION
Defendant.)	
_____)	

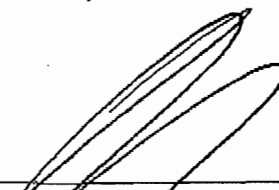
Javier Aguilar, by and through his attorney of record, Dennis M. Charney, hereby objects to the Order For Psycho-Sexual Abuse Evaluation entered on March 5, 2010. First, the Defendant intends to exercise his rights pursuant to *State v. Estrada*. Second, the Court ordered that the cost of the preparation of said evaluation be at the Defendant's expense. The Defendant is currently incarcerated and has no means to pay for said psycho-sexual evaluation even if he was to agree to the same.

OBJECTION TO ORDER FOR PSYCHO-SEXUAL ABUSE EVALUATION - 1

000154

Accordingly, it is respectfully requested that this Court rescind the Order For Psycho-Sexual Abuse Evaluation. It is further requested that the Court not increase or in any way factor into its sentencing decision the Defendant's exercise of his Estrada rights.

Respectfully submitted this 12th day of March, 2010.




DENNIS M. CHARNEY
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 2010, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Canyon County Prosecutor
1115 Albany St
Caldwell, Id 83605
Fax: 454-7474

() U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
(X) Facsimile



DENNIS M. CHARNEY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **BRADLY S. FORD** DATE: MARCH 30, 2010

THE STATE OF IDAHO,)	COURT MINUTES
)	
Plaintiff,)	CASE NO: CR-2009-24815-C
)	
vs.)	TIME: 11:00 A.M.
)	
JAVIER AGUILAR,)	REPORTED BY: Yvonne Hyde-Gier
)	
Defendant.)	DCRT 5 (1135-1145)
)	

This having been the time heretofore set for **Defendant's Objection to Order for Psycho-sexual Evaluation** in the above entitled matter, the State was represented by Ms. Erica Kallin, Deputy Prosecuting Attorney for Canyon County, and the defendant was present in court with counsel, Mr. Dennis Charney.

The Court reviewed relevant procedural history in this matter.

The Court noted the Defendant's Objection to Order for Psycho-sexual Evaluation.

Mr. Charney indicated the defendant fully understood his rights and did not wish to participate in the Psycho-sexual Evaluation.

In answer to the Court's inquiry, Mr. Charney indicated the defendant would participate in the Presentence Investigation Report, with the exception of things relating to these charges.

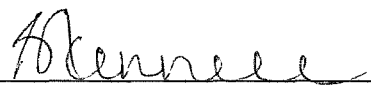
In answer to the Court's inquiry, the defendant indicated he fully understood his rights. Further, he did not wish to participate in the Psycho-sexual Evaluation, but would participate in the Presentence Investigation Report with the exception of questions relating to these charges, or the like.

Mr. Charney requested all documentation regarding the defendant in the possession of SANE Solutions be destroyed.

The Court indicated it would prepare an Order Rescinding Order for Psycho-sexual Evaluation, and instruct SANE Solutions to destroy all documentation pertaining to the defendant.

The defendant was remanded to the custody of the Canyon County Sheriff pending further proceedings.

- - - -


Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **BRADLY S. FORD** DATE: MAY 03, 2010

THE STATE OF IDAHO,)	COURT MINUTES
)	
Plaintiff,)	CASE NO: CR-2009-24815-C
)	
vs.)	TIME: 4:00 P.M.
)	
JAVIER AGUILAR,)	REPORTED BY: Yvonne Hyde Gier
)	
Defendant.)	DCRT 5 (347-417)
)	

This having been the time heretofore set for **status conference** in the above entitled matter, the State was represented by Ms. Erica Kallin, Deputy Prosecuting Attorney for Canyon County, and the defendant was present in court with counsel, Mr. Dennis Charney.

The Court noted it received a letter from the defendant indicating he wished to discharge his attorney, and request appointment of the Public Defender.

Based up receipt of said letter, the Court scheduled this hearing to address the issue with all parties.

In answer to the Court's inquiry, each of counsel indicated they received a copy of the defendant's letter.

Mr. Charney stated the defendant had not addressed any concerns with him to date.

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The defendant presented statements in support of his request to discharge his attorney. The Court expressed opinions in regard to the defendant's statements.

Mr. Charney expressed concern regarding his continued representation of the defendant based upon claims made in the letter. Mr. Charney further detailed communication between himself, the defendant, and Bobbi Aguilar since trial.

Ms. Kallin stated her concerns, and noted the sentencing date scheduled for the following week. Ms. Kallin further noted the defendant previously invoked his rights in regard to the Presentence Investigation Report and Psycho-sexual evaluation.

The Court expressed additional opinions for the record.

The defendant requested that he be allowed to read his list of complaints for the record. The Court advised the defendant he had the right to remain silent.

In answer to the Court's inquiry, the defendant stated he wished to discharge Mr. Charney at this time. Mr. Charney had no objection. The Court thanked Mr. Charney for his appearance and excused him from these proceedings.

The defendant requested appointment of the Public Defender. The defendant was sworn by the clerk, and examined by the Court to determine if he was indigent. The Court appointed the Public Defender to represent the defendant in this matter.

The Court noted it would contact the Public Defender's office regarding the magnitude of this case, and the fast approaching sentencing date. Ms. Kallin indicated the State had no objection to the Court contacting the Public Defender. Ms. Kallin

additionally stated she would contact Mr. Schwartz directly to determine what information he may require from the State.

The Court noted it was highly unlikely this matter would proceed to sentencing on the date scheduled. The Court stated it would accommodate counsel with any hearing requested to expedite matters.

The Court noted the **sentencing date of the 11th day of May 2010 at 9:30 a.m.**, would remain set at this time.

Upon the defendant's attempt to make additional statements for the record, the Court instructed him not to speak without first talking to his attorney.

The defendant was remanded to the custody of the Canyon County Sheriff pending further proceedings.


Deputy Clerk

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 5-3-10 AT 4:15 P.M.
CLERK OF THE DISTRICT COURT
BY J. Meyers, Deputy

THE STATE OF IDAHO/or

Javier Aguilar

Case No. CR-2009-24815-C

ORDER APPOINTING PUBLIC
DEFENDER

The Court being fully advised as to the application of the above-named applicant and it appearing to be a proper case,

IT IS HEREBY ORDERED that the Canyon County Public Defender be, and hereby is, appointed for

Javier Aguilar

☒ THE MATTER IS SET FOR Sentencing May 11, 2010
9:30 AM to 12:00 pm before Judge FORD

☐ THE MATTER SHALL BE SET FOR _____
before Judge _____

Dated: May 3, 2010

Signed: _____
Judge

☒ In Custody -- Bond \$ No Bond
☐ Released: ☐ O.R.
☐ on bond previously posted
☐ to PreTrial Release

Juvenile: ☐ In Custody
☐ Released to _____

☒ No Contact Order entered.

☐ Cases consolidated.

☐ Discovery provided by State.

☐ Interpreter required.

☐ Additional charge of FTA.

Original--Court File

Yellow--Public Defender

Pink--Prosecuting Attorney

ORDER APPOINTING PUBLIC
DEFENDER

*W/Copy
Judgment
& Verdict*

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FILED
A.M. P.M.

MAY 10 2010

CANYON COUNTY CLERK
B RAYNE, DEPUTYIN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Canyon

<u>State</u>)	
	)	REQUEST TO OBTAIN APPROVAL TO
Plaintiff,	)	BROADCAST AND/OR PHOTOGRAPH A
	)	COURT PROCEEDING
-vs-)	
<u>Javier Aguilar</u>)	
)	
Defendant.)	
)	

() I hereby request approval to broadcast and/or photograph the following court proceeding:

Case Number CR-09-24815
 Date 5/11/10
 Time 9:30am.
 Location Canyon County Courthouse
 Presiding Judge Bradley Ford

() I have read the following rule permitting cameras in the courtroom and will comply in all respects with the Rule and Order of the Court.

RULE 45 PERMITTING CAMERAS IN THE COURTROOM
 (effective March 30, 1999)

- a. Video, audio, and photographic coverage of public proceedings before district and magistrate judges is authorized subject to the discretion of the presiding judge. The presiding judge maintains the right to limit coverage or photography of any public hearing when the interests of the administration of justice requires. Authorization may be revoked at any time, without prior notice, when in the course of discretion it appears that broadcast coverage or still photographs of district or magistrate court proceedings are interfering in any way with the proper administration of justice.

REQUEST TO OBTAIN APPROVAL TO
 BROADCAST AND/OR PHOTOGRAPH A
 COURT PROCEEDING

Page 1 of 4

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- b. The presiding judge may, at his or her discretion, limit, restrict or prohibit the taking of photographs or coverage at any proceeding. Any decision regarding broadcasting, televising, recording, or photographing of proceedings is not subject to appellate review.
- c. Coverage of the following proceedings is prohibited:
1. There shall be no broadcast of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge held at the bench. There shall be no still photography, photographs, or television transmission of notes upon the counsel table, nor of any exhibits before they are admitted into evidence. There shall be no broadcast of verbal communications between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge.
 2. There should be no recording or transmission of in-camera sessions or judicial deliberations.
 3. There shall be no recordings or broadcast transmissions of proceedings when they are closed to the public including adoptions, mental health proceedings, child protective act proceedings, termination of parent child relations, grand jury proceedings, issuance of arrest and search warrant proceedings covered by Rule 32, Idaho Administrative Rules, or a comparable rule when the proceeding must be closed to effectuate the purposes of the rule.
- d. The presiding judge may exclude electronic media coverage and prohibit still photography of a particular participant or direct that the identity or audio of a participant be concealed upon a determination that such coverage will have a substantial adverse effect upon a particular individual. It is expected the presiding judge will exercise particular sensitivity to victims of crime.
- e. The administrative district judge shall promulgate rules governing coverage outside the courtroom in courthouses within the judicial district.
- f. It is the responsibility of each broadcast news representative present at the beginning of each session of court to achieve an understanding with all other broadcast representatives as to who will function at any given time, or in the alternative, how they will pool their photographic coverage. This understanding shall be reached outside the courtroom and without imposition upon the presiding judge or court personnel. The presiding judge shall not be called upon to resolve any disputes except to determine that if the broadcast representatives cannot agree, broadcast coverage will not take place.
- g. Approval to broadcast or photograph a court proceeding must be obtained in advance from the presiding judge.

REQUEST TO OBTAIN APPROVAL TO
BROADCAST AND/OR PHOTOGRAPH A
COURT PROCEEDING

Page 2 of 4

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- h. If coverage is authorized, rules governing the media shall be established at each judge's discretion. Coverage may be authorized subject to the following guidelines:
1. Jury - Photographing or videotaping of the jury or jurors is prohibited, including during jury selection.
 2. Light - Existing light only may be used for still photography or video coverage. Electronic flash or artificial lighting is prohibited.
 3. Camera Noise - Camera noise and distractions shall be kept to a minimum.
 4. Still Photography - External motor drives shall not be used. Manual film advance or quiet built-in winders shall be used in a manner that does not disrupt the court proceedings. The number of exposures shall be kept to a minimum. Fast random shooting of photographs is not permitted.
 5. Video Coverage - No video or television camera shall give any indication of whether it is operating.
 6. Audio - Any audio equipment shall be placed as determined by the presiding judge. There shall be no broadcast of confidential communications. If there is coverage by both radio and television, the microphones used shall serve each system without duplication.
 7. Location - Media shall be in position at least 15 minutes before court begins. Media positions shall not change while court is in session. The specific location or locations of media must be approved in advance by the presiding judge or designee.
 8. Dress - Media representatives shall present a neat appearance and conduct themselves in keeping with the dignity of court proceedings as determined by the presiding judge.
 9. Pooling - Only one still photographer and one camera operator shall be permitted in the courtroom. The presiding judge may allow additional cameras. Media organizations must arrange for pooling.
- i. The presiding judge may require any media representative to demonstrate adequately in advance of a proceeding that the equipment to be used merits the standards of the rule.
- j. The public shall not be required to incur any expenses to accommodate cameras or other equipment covered by this rule. Any proposal by media representatives to modify existing facilities at media expense to accommodate use of equipment in the courtroom shall be submitted to the trial court administrator for the district. A final proposal shall be submitted to the administrative district judge for acceptance, modification, or rejection.

- k. The Media/Courts Committee shall on an ongoing basis evaluate the use of cameras in the courtroom and at any time bring forth recommendations to amend or modify this order.

THIS WRITTEN PLAN TO POOL PHOTOGRAPHIC AND/OR BROADCAST COVERAGE BY ALL INTERESTED MEDIA IS APPENDED HERETO.

Dated: 5/7/10

Niki Tubing-DW
Signature

Idaho Statesman
Representing

1700 N. Curtis St. Boise
Address

377-10446
Telephone Number

ORDER

The Court, having considered the request under the Rule permitting cameras in the trial courtrooms, hereby orders that permission to broadcast and/or photograph the above hearing is

☒ granted; under the following restrictions:

Subject to the requirements and restrictions set
forth in the "Supplemental Conditions and
Restrictions regarding Broadcast and/or Photographic
Coverage of Courtroom" Attached hereto as
Attachment A"

☐ denied.

Dated: 5/10/10

[Signature]
Judge

REQUEST TO OBTAIN APPROVAL TO
BROADCAST AND/OR PHOTOGRAPH A
COURT PROCEEDING

SUPPLEMENTAL A

**CONDITIONS AND RESTRICTIONS REGARDING BROADCAST AND/OR
PHOTOGRAPHIC COVERAGE OF COURTROOM FOR**

Case Name: **State vs. Javier Aguilar**

Case No.: **CR09-24815**

Date/Dates: **May 11 2010**

1. No video or photographs shall be taken of the gallery (audience) or of spectators in the courtroom.
2. No video or photographs shall be taken of the alleged victim(s) or family members.
3. No video or photographing shall commence until the case is called and all video or photographing shall cease when the case concludes.
4. No video or photographing shall be taken during any recess of the court.
5. No other cameras or use of cameras will be allowed in the courthouse, except as permitted by the respective presiding judge(s).
6. Video media must pool their coverage. The camera allowed pursuant to the order allowing broadcast and/or photographic coverage shall provide video feed to all other requesting media.
7. The camera shall be set up behind the bar on the left side (jury box side) of the courtroom unless a different location is approved by the Court in writing prior to the hearing.
8. The camera shall be set up so as not to interfere with public ingress and egress.
9. The camera and the camera operator must be in position and set up not less than fifteen (15) minutes prior to the commencement of court, which is scheduled to commence at 9:30 a.m. The camera and the camera operator must remain in court until adjourns or recesses.
10. Cameras shall not record or broadcast any conversation or communication between attorneys and clients.
11. No video or photographs shall be taken of the jury or of any individual juror, where applicable.

12. No video or sound feed that may be heard or viewed by any person who may be a witness in the case before the court shall be permitted in the hallways of the courthouse.

13. No cameras or media personnel are allowed in the third floor security hallway behind the courtrooms.

14. No video or photographs shall be taken of any witness before, during, or after his/her testimony.


15. No person shall be asked to pose for any photograph in the courtroom. No staged or posed photographs shall be permitted.

16. No camera person shall be permitted in the well of the courtroom at any time.

17. The media representative appearing at the scheduled hearing must identify himself or herself for the court record to confirm that he or she agrees to be bound by the conditions imposed by the Court.

18. Other _____

Dated this 10th day of May, 2010.



District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been forwarded to the following, either by U.S. Mail, first class postage prepaid; by hand delivery; by courthouse basket; or by facsimile copy:

Person/Entity Requesting Approval:

Idaho Statesman
200 N. Curtis Road
Boise, Idaho 83707

John T. Bujak
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany
Caldwell, Idaho 83605

Mirmura Law Office
Public Defender
510 Arthur Street
Caldwell, Idaho 83605

Dated this _____ day of May, 2010.

WILLIAM H. HURST
Clerk of the Court

By _____
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **BRADLY S. FORD** DATE: MAY 11, 2010

THE STATE OF IDAHO,)	
	)	COURT MINUTES
Plaintiff,)	
	)	CASE NO. CR-2009-24815-C
vs)	
	)	TIME: 9:30 A.M.
JAVIER AGUILAR,)	
	)	REPORTED BY: Yvonne Hyde Gier
Defendant.)	
	)	DCRT 5 (917-930)

This having been the time heretofore set for **sentencing** in the above entitled matter, the State was represented by Ms. Erica Kallin, Deputy Prosecuting Attorney for Canyon County, and the defendant was present in court with counsel, Mr. Mark Mimura.

The Court reviewed relevant procedural history in this matter.

The Court noted the Public Defender had been appointed on May 3, 2010 after the defendant discharged Mr. Charney as his counsel. It was the Court's belief defense counsel would need more time to prepare for sentencing to become familiar with the facts of this case.

Mr. Mimura noted for the record he had not received a copy of the Presentence Investigation in this matter and was not prepared to proceed at this time. Further, Mr. Mimura requested the Court appoint Mr. Kenneth Stringfield as conflict counsel in this

matter. Mr. Mimura submitted a Notice of Public Defender Conflict and a proposed Order Appointing Conflict Counsel.

Mr. Mimura presented statements in support of the request for appointment of conflict counsel; noting he spoke with Mr. Stringfield who was willing to accept this matter. Mr. Mimura requested sentencing be reset to allow the defendant and Mr. Stringfield a chance to meet and discuss this case.

Mr. Mimura stated he felt there may be post-conviction issues in this matter. Therefore, it would be more economical to conflict this matter for sentencing, to allow the Public Defender's office to handle any post-conviction issues.

Ms. Kallin concurred with the appointment of Mr. Stringfield as conflict counsel in this matter. Ms. Kallin stated she would contact Mr. Stringfield and provide any discovery he may need in preparation for sentencing.

The Court noted it received the Presentence Investigation on May 7, 2010 and understood defense counsel would need more time to prepare based upon the circumstances in this matter.


Ms. Kallin advised the Court the State intended to argue uncharged conduct at sentencing and would file a formal notice to the same.

The Court made comments to the defendant in regard to ex-parte communication.

The Court signed the Order Appointing Conflict Counsel; as to Mr. Kenneth Stringfield.

The Court continued sentencing in this matter to June 8, 2010 at 1:00 p.m.

The defendant was remanded to the custody of the Canyon County Sheriff pending further proceedings.


Deputy Clerk

MARK J. MIMURA
Idaho State Bar No. 3636

MIMURA LAW OFFICES, PLLC
Attorneys at Law
CANYON COUNTY PUBLIC DEFENDERS
510 Arthur
Caldwell, Idaho 83605
Telephone: (208) 639-4610
Facsimile: (208) 639-4611

Attorneys for the Defendant

FILED
9:30 A.M. MAY 11 2010 P.M.

CANYON COUNTY CLERK
J MEYERS, DEPUTY

 ORIGINAL

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

JAVIER AGUILAR,

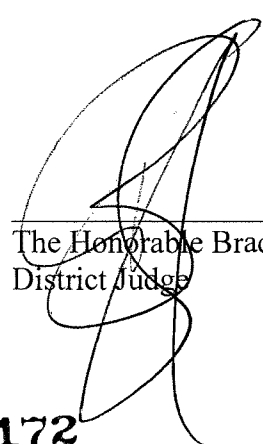
Defendant.

Case No. CR-2009-24815-C

ORDER APPOINTING
CONFLICT COUNSEL

This matter having come before this Honorable Court on Notice of Public Defender Conflict, and good cause appearing therefore, this Court does hereby Order that Kenneth Stringfield, 213 S. 10th Ave., PO Box 777, Caldwell, Idaho, 83606 whose telephone number is (208) 454-6879 be appointed to represent the above-named Defendant in all further proceedings. The Defendant and Appointed Counsel are further advised to appear at the Sentencing Hearing set for the 8th day of June, 2010 at 1:00 ~~am~~ p.m.

Dated this 11 day of May, 2010.



The Honorable Bradley S. Ford
District Judge

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CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of May, 2010, I served a true and correct copy of the ORDER APPOINTING CONFLICT COUNSEL upon the individual(s) named below in the manner noted:

- ☐ By depositing copies of the same in the United States Mail, postage prepaid, first class.
- ☐ By depositing copies of the same in the Canyon County Interdepartmental Mail.
- ☒ By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: (208) 454-7474.

John T. Bujak
Canyon County Prosecuting Attorney
1115 Albany Street
Caldwell, ID 83605

- ☐ By depositing copies of the same in the United States Mail, postage prepaid, first class.
- ☐ By depositing copies of the same in the Canyon County Interdepartmental Mail.
- ☒ By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: (208) 639-4611.


Mimura Law Offices, PLLC
Canyon County Public Defenders
510 Arthur
Caldwell, ID 83605

- ☐ By depositing copies of the same in the United States Mail, postage prepaid, first class.
- ☐ By depositing copies of the same in the Canyon County Interdepartmental Mail.
- ☒ By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: (208) 459-6849.

Kenneth F. Stringfield
213 S. 10th Ave.
Caldwell, ID 83605

William "Bill" Hurst
CLERK OF THE COURT

By: Deputy Clerk



000173

JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany &
Caldwell, Idaho 83606-0668

Telephone: (208) 454-7391

MAY 14 2010

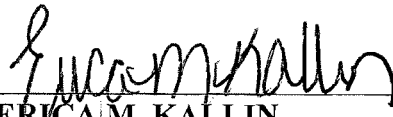
CANYON COUNTY CLERK
S ROGERS, DEPUTY

THE STATE OF IDAHO)
)
Plaintiff,) CASE NO. CR2009-24815
)
vs.) **NOTICE OF INTENT**
) **TO ARGUE UNCHARGED VICTIMS**
)
JAVIER GUILLEN AGUILAR,)
)
Defendant.)
)

NOTICE OF INTENT TO ARGUE UNCHARGED VICTIMS

relying upon State v. Wickel, 126 Idaho 578, 887 P.2d 1085 (Ct.App. 1994), as well as State v. Martin, 142, Idaho 58, 122 P.3d 317 (Ct.App. 2005), *et. al* to argue the uncharged conduct. The police investigated all of these alleged incidents and police reports have been previously disclosed to the defense for all victims except M.A. The State is simultaneously filing a supplemental discovery response which contains the police report for M.A. The State, in disclosing this evidence, has complied with the requirements in Martin, and is providing the defense an adequate opportunity to explain or rebut the adverse evidence.

DATED This 13 day of May, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

NOTICE OF INTENT

RULE 404(b) I.R.E. EVIDENCE


2

J:\SVU Special Victims Unit\SVU FORMS\1_ERICA_Notice of Intent 404b 1.doc

000175

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that a true and correct copy of the foregoing NOTICE OF INTENT was delivered to the Defendant's attorney of record, by placing said Notice of Intent in Ken Stringfield's basket located at the Clerk's Office, on or about this 13 day of May, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

NOTICE OF INTENT

RULE 404(b) I.R.E. EVIDENCE

3

J:\SVU Special Victims Unit\SVU FORMS\ERICA_Notice of Intent 404b I.doc

000176

bm

JOHN T. BUJAK
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
1040 A.M. P.M.
MAY 14 2010

CANYON COUNTY CLERK
S ROGERS, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

JAVIER GUILLEN AGUILAR

Defendant.

CASE NO. CR2009-24815

**OBJECTION TO LETTERS
CONTAINED IN PSI**

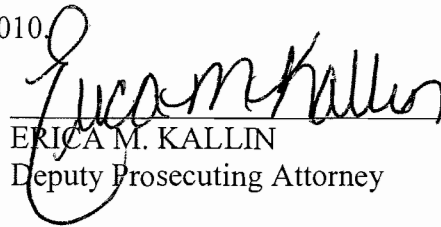
COMES NOW, ERICA M. KALLIN, Deputy Prosecuting Attorney of the Canyon County Prosecuting Attorney's Office, on behalf of the State of Idaho, who objects to certain letters in support of the defendant contained in the PSI being considered by the Court. Specifically, the first 17 letters in support of the Defendant seem appropriate for the Courts consideration, as they were all written within the last year and are written in support of the Defendant after charges were filed. The State objects to the remaining letters, pages 18-40 (fax page number at the bottom of the page.) These letters were written in 2001 in support of the Defendant's request to become a citizen. They are not related to the charge and do not contain

OBJECTION TO LETTERS
CONTAINED IN PSI

ORIGINAL

relevant information pursuant to I.C.R. Rule 32(e). For that reason, the State requests they be stricken from the PSI.

DATED This 13 day of May, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was served upon the attorney for the defendant, Kenneth F. Stringfield, by placing said instrument in their basket at the Clerk's Office, on or about the 13 day of May, 2010.


ERICA M. KALLIN
Deputy Prosecuting Attorney